IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI

UNITED STATES OF AMERICA, PETITIONER,

v.

STANDARD OIL COMPANY OF NEW JERSEY ET AL., DEFENDANTS

DEFENDANTS' TESTIMONY

On behalf of the defendants:

Mr. JOHN G. MILBURN, Mr. MORITZ ROSENTHAL
Mr. JOHN S. MILLER, Mr. M. F. ELLIOTT, Mr. MARTIN CAREY, Mr. F. L. CRAWFORD, Mr. DOUGLAS CAMPBELL, Mr. C. W. MARTYN.

On behalf of the petitioner:

Mr. FRANK B. KELLOGG, Mr. C. B. MORRISON
Mr. J. HARWOOD GRAVES

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Thursday, October 1, 1908—10.30 a. m.

By consent of the parties, the hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison; on behalf of the defendants, Mr. Moritz Rosenthal, Mr. John S. Miller, Mr. Chauncey W. Martyn.

HENRY E. FELTON, called on behalf of the defendants, being duly sworn, testified as follows:

Direct-examination by Mr. ROSENTHAL:

Q. What is your full name?—A. Henry E. Felton.

Q. Where do you live?—A. New York City.

Q. How long have you lived there?—A. With the exception of two years that I lived in the State of New Jersey, I have lived in New York since 1898.

Q. You have been engaged in your present occupation in connection with the affairs of the Standard Oil Company continuously in New York since 1898, have you?—A. I have; with some slight changes of duties.

Q. You are also president of the Union Tank Line Company?—A. I am.

9641 Q. And have been for how long?—A. Since February, I think, 1906.

Q. Prior to your entering the employ of the Standard Oil Company in 1898, what was your business?—A. Immediately prior to that time I was general freight agent of the Lake Shore and Michigan Southern Railway. I held that position from May or June, 1897, until the same time in 1898.

Q. That is, you were general freight agent of the Lake Shore and Michigan Southern for a year?—A. I was.

Q. And just before that what was your business?—A. I resigned the general freight agency of the Chicago and Eastern Illinois, now part of the Frisco System, to take the position of general freight agent of the Lake Shore.

Q. How long were you general freight agent of the Chicago and Eastern Illinois?—A. From November, 1893, until May or June, 1897.

Q. With headquarters where?—A. Chicago.

Q. And as general freight agent of the Lake Shore and Michigan Southern, your headquarters were where?—A. At Cleveland.

Q. How long were you connected with the Chicago and Eastern Illinois in any capacity whatever? When did you begin with that road?—A. I went to work for the Chicago and Eastern Illinois in Chicago as a clerk in 1882.

Q. In what sort of a clerical position?—A. We had a very limited force, and I was practically an assistant to the assistant general freight agent.

Q. Were you what is known as a rate clerk in these days?—A. Yes. I soon became rate clerk, chief clerk, and assistant
9642 general freight agent of the Chicago and Eastern Illinois.

Q. As rate clerk, what were your general duties?—A. It so happened that I went with the C. and E. I. road five years before the interstate commerce law was passed.

Q. That is the act of 1887?—A. The act of 1887. After a year or six months of preliminary work, I found myself forced right into rate matters, the quoting of rates, incidentally the soliciting of business that might come through the general office, the writing up and compiling of such a limited number of tariffs as we had at that time, the issuing of rate-sheets, and work incident to a general freight office.

Q. And your work as chief clerk of that office, I suppose, was along those same lines, was it not?—A. Yes; along those same lines.

Q. And when did you become assistant general freight agent of that road?—A. I am not sure, it has slipped my mind; I think it was in 1892.

Q. Had you had any railroad experience before you went with the C. and E. I.?—A. I held two or three petty clerkships around Chicago, at different places——

Q. With different railroad companies?—A. Yes; with nothing of any importance at all until I went with the C. and E. I.

Q. In those early days, prior to the passage of the interstate commerce act, what kind of tariffs did you have, mostly?—A. We had very few prior to the passage of the interstate law of 1887. I would say, as closely as I can recall that long period, that the Chicago
9643 and Eastern Illinois did not have on file in its general office at that time more than a dozen tariffs.

Q. And were those class or commodity tariffs?—A. They were very largely class tariffs. There were some commodity tariffs on grain or lumber, things of that kind, that the C. and E. I. produced and on which they made rates to the East.

Q. The C. and E. I. was an interstate road, was it?—A. It was.

Q. Running (stating it in its general directions) where?—A. From Chicago, along the eastern border of Illinois to Danville, and then just below Danville crossing into Indiana, and going to Terre Haute. At that time that is about all we had. Other divisions were added in subsequent years.

Q. And later on it was extended to Evansville?—A. No; the line from Terre Haute to Evansville at that time was owned separately and known as the Evansville and Terre Haute road. I was general freight agent of that road from January, 1893, until November, 1893.

Q. Did that afterwards become a part of the C. and E. I. system?—A. Not part of the C. and E. I. system as I understand it, but they both become part of the Frisco system.

Q. How were rates made in those days prior to the passage of the interstate commerce act?—A. There was a basis——

Q. I don't mean technically, but did your class tariffs cover rates to all points on your road and all kinds of commodities?—A. No. The class tariffs as a rule covered the junction points, or common points as we used to call them at that time, and commodity rates were covered very largely by rate issues that were issued to cover
9644 the particular business for which the rate was quoted.

Q. What about a strict adherence to your printed rate sheets prior to 1887?—A. So far as the Chicago and Eastern Illinois road was concerned, and so far as our immediate connections were concerned, we having authority to make rates over such connections, they in turn having authority to make rates over our road, rates as shown in such a limited number of tariffs as we had were very poorly maintained and adhered to.

Q. What do you mean by that?—A. I mean by that, if a man came into my office when I was rate clerk, during that period, with a round lot of lumber to go to Indianapolis, if our rate on lumber in such a tariff as we might have was 10 cents, I would get 10 cents if I could; but I would take 6 rather than let him go.

Q. Was that the usual practice in those days?—A. I can only speak definitely for the road that I was with and those we were connected with, but the fact that we were forced to do such things and forced to depart from our so-called standard tariffs in order to get the business, was conclusive evidence to my mind at that time that other roads were doing the same thing.

Q. How were those departures from your regularly established rates executed? How were they carried out?—A. Almost invariably by rebate, or refund, or drawbacks. We did not always call them rebates; sometimes we would call them overcharges.

Q. Do I understand that the shipper under such circumstances would ordinarily pay the printed tariff charge and then have a
9645 refund made to him, paying him the differenece between the tariff rate and the price agreed upon?—A. That is correct.

Q. Was that practice limited to the transportation of any one commodity?—A. It was not.

Q. How general was it, Mr. Felton, during the five years that you were familiar with the freight business of the C. and E. I. road, from 1882 to 1887?—A. It applied to almost everything that we produced and handled except our grain business. We were jealous of our grain earnings; we felt that as the grain was produced along our line we had a right in that such as we did not have in anything else.

Q. That is, as to grain produced along your line, your road being the only avenue by which that grain could be hauled to the market, there your road adhered to its published rate?—A. They adhered to the published rate.

Q. But from points where there was competition with other roads, is it not true that, prior to the passage of the interstate commerce act of 1887, freight was bought and sold by competing roads just as

mercantile commodities were?—A. That is true. I used to feel in those old days, as had been recently expressed, that the rate clerk or the traffic man, or whatever his position who had authority to make rates, was practically a sales agent.

Q. Selling freight?—A. He sold his transportation at the best price he could get.

Q. In the conduct of your business, prior to 1887, did you come in contact with other railroad men connected with other roads?—A. Very generally.

9646 Q. I presume it is true, is it not, that you frequently met with other traffic men?—A. Yes.

Q. I mean you came in contact with them in the course of the conduct of your business.—A. Yes. We had little so-called committees at that time. The railroads were making an effort to agree upon a standard of rates, but it was not very long after something of that kind had been agreed upon before some of us would break away in our anxiety to get what we thought was a fair share of the traffic in that territory.

Q. That is, the gentlemen's agreement of the early eighties was sometimes violated as it was ten or fifteen years later?—A. Almost invariably, soon or late, those agreements were broken.

Q. From your contact with other railroad men and your general experience in the railroad business at that time, as part of the knowledge that you then acquired as a railroad man, what do you say as to whether the payment of drawbacks or rebates by railroad companies generally for the transportation of freight in the years preceding the passage of the interstate commerce act of 1887, was or was not a common practice?—A. A very common practice.

Q. The interstate commerce act was passed in 1887 and it then became necessary to have tariffs, did it not, covering everything and all points?—A. That is correct.

Q. And immediately thereafter what was your principal occupation in so far as the building up of tariffs on the C. and E. I. was concerned?—A. It became my duty then to arrange percentage divisions with connecting roads of the Chicago and Eastern

9647 Illinois covering all of our territory. What I mean by that is: Prior to the interstate commerce law of 1887, the Chicago and Eastern Illinois would have, for instance, percentages from Chicago to Indianapolis via Danville, on what was then the Indiana, Bloomington and Western Railroad. But those percentages perhaps would not cover intermediate points. So one of the first things that devolved upon the rate man was to meet the rate men of connecting roads and arrange for a basis upon which rates of all kinds could be divided. Simultaneously with that, freight committees were established, not only covering the principal cities, but States or parts of States, and the railroads got together, their rate representatives attending meetings, and rates were agreed upon and what is technically known as "checked in." For example, a committee would sit in Chicago, and we would start in to make rates from Chicago to all

points in Indiana, by all roads. That brought about a vast amount of contention, and I think I am very reasonable in saying that it was eight or ten years before those questions were completely thrashed out and settled; perhaps they are not settled to-day.

Q. That is, the building up of rates, not only on the individual road but in its relation with other roads, involved a technical labor that took all of those years, to say the least?—A. Yes, that is correct.

Q. And that was a difficult problem, was it not?—A. It was. I speak of Chicago, but at the time the rate check was being
9648 made from Chicago there was a Milwaukee rate committee that wanted to reach that territory on some kind of a small differential over Chicago. There was an Indianapolis rate committee, and the Terre Haute rate committee, and every town where there would be two or more competing roads of any size had its little rate committee trying to adjust and agree upon rates and issue tariffs in compliance with the law.

Q. During that chaotic period of making and building up rates, I presume violations of tariffs were practically the rule rather than the exception, were they not?—A. That is correct.

Q. And necessarily so during a period of that character?—A. That is correct.

Mr. ROSENTHAL. I do not suppose counsel for the Government will require us to make any proof in connection with the statistics of railways in the United States in 1904, issued by the Interstate Commerce Commission?

Mr. KELLOGG. Let me see it.

(Mr. Rosenthal hands book to Mr. Kellogg.)

Mr. ROSENTHAL. There are certain pages of that book that we wish to refer to. It is an official governmental document.

Mr. KELLOGG. Certainly. There is no necessity to make proof, if this is the report issued by the commission, and I guess it is.

Mr. ROSENTHAL. Well, aren't you quite sure of it?

Mr. KELLOGG. I haven't seen it. I guess it is. There is no necessity to make proof that that is the report issued by the commission.

Q. Mr. Felton, have you examined the 1904 report of the
9649 Interstate Commerce Commission?—A. I have.

Q. And have you examined particularly pages 11 to 13 with a view of ascertaining the total railway mileage of the United States on June 30, 1904?—A. I have.

Q. And what do you find that to be and to what page of the book do you refer?—A. On page 13 of Statistics of Railways in the United States for the year 1904, issued by the Interstate Commerce Commission, I find, under the general caption "Summary of railway mileage owned, for the years ending June 30, 1904, to 1894," that the railway mileage of the United States was 213,904.34 miles.

Q. That is, the total railway mileage of the United States, as shown by that volume so issued by the Interstate Commerce Commission June 30, 1904, was 213,904.34 miles?—A. That is correct.

Mr. KELLOGG. Is that figured as single-track mileage, or on what basis is that mileage computed, if you can state?

WITNESS. I have a definite answer right here on page 12, which I had not noticed previously: "The aggregate length of railway mileage in the United States on June 30, 1904, was 213,904.34 miles."

Q. Well, that doesn't answer Mr. Kellogg's question. Does that include side tracks, switches, and double tracks?—A. That is single track.

Q. What do you mean by that? That is, if a railroad between here and the Mississippi River has 140 miles of double track in that figure of 213 thousand miles, that is only treated as 140 miles of mileage?—A. That is what I understand from the study I have made of this.

Q. And not 280 miles?—A. Yes.

9650 Mr. ROSENTHAL. I think we are agreed on that.

Mr. KELLOGG. If that is not correct, it can be corrected.

Q. Do you also find in that same volume, from pages 140 to 276, inclusive, the total number of railroads engaged in interstate commerce reporting to the Interstate Commerce Commission, and, if so, how many different railroads do you so find?—A. I find, commencing on page 140 and running to 276, "Table 1, classification of railways and mileage for the year ending June 30, 1904;" I find on page 276, the total number of what are apparently separately organized railroads to be 2,104.

Q. That is, there were 2,104 railroad companies engaged in interstate-commerce business and reporting to the Interstate Commerce Commission?—A. I find according to this report that 2,104 railroads have reported to the Interstate Commerce Commission and presumably are engaged in interstate traffic.

Q. Have you endeavored to ascertain the number of different railroad systems that comprehend these 2,104 railroads?—A. I have.

Q. About how many different railroad systems have you estimated that there are?—A. I find the number of systems to be 1,209.

Q. That is, these 2,104 roads are in 1,209 different systems?—A. That is correct.

Q. Do you also find in that same statistical volume, on page 73, the total freight tonnage of the United States for the year 1904?—A. I do.

Q. What do you find that to be?—A. I find at the head of

9651 page 73 the following: "Summary of freight traffic movement for the year ending June 30, 1904—United States." I then find four columns: The first is "Commodity;" the second, "Tonnage originating on road;" the third, "Tonnage received from connecting roads and other carriers;" fourth, "Total freight tonnage." I will not enumerate the commodities unless you ask me to. I will take the second column showing tonnage originating on road, and I find that to be a grand total of 641,680,547 tons.

Q. Now, that means, Mr. Felton, that there are that many hundred millions of tons of freight originating on the different roads of the United States, does it not?—A. That is correct, according to this volume.

Q. So that if a hundred thousand tons, for example, of freight originates on the Lake Shore road, if you please, and is transported by the Lake Shore from Chicago to New York, also going over the New York Central, that is only counted as the movement of a hundred thousand tons of freight over the Lake Shore?—A. That is right. The third column, of which I have not given you the figures, provides for that.

Q. Does that state the total amount of freight tonnage, regardless of where it originated?—A. The third column?

Q. Yes.—A. It reads: "Tonnage received from connecting roads and other carriers."

Q. I see. So that your statistical table on page 73 states the total amount of tonnage originating on the various roads, and in addition to that the total amount of tonnage received from other connecting carriers?—A. That is correct.

Q. Have you compiled a table of the principal commodities
9652 that are enumerated in that list going to make up the 641,-
680,547 tons?—A. Such a table was compiled under my instructions and quite carefully looked over by me.

Q. I show you defendants' Exhibit 105. Please state what that is.—A. List of the principal commodities and the amount of tonnage of each, compiled from the tables on page 73 of Statistics of Railways in the United States for the year 1904.

Mr. MILLER. From the same book, the Interstate Commerce Commission?

WITNESS. Yes, sir.

Q. The same book that you have been talking about?—A. Yes, sir; the same publication.

Mr. ROSENTHAL. Suppose we speak of this Statistics of Railways in the United States issued by the Interstate Commerce Commission for 1904 as the 1904 Interstate Commerce book, without repeating the full title every time?

Mr. KELLOGG. Or the Commission's report.

Mr. ROSENTHAL. Or the Commission's report for 1904.

Mr. KELLOGG. Yes, sir.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 105.

Q. I find in defendants' Exhibit 105 the following: "Petroleum and other oils, 4,809,349 tons." Please state what other oils are included in that summary, if you know.—A. Why, the Commission's statistics seem to be very comprehensive. It reads, "Petroleum and
other oils." That would take in everything—cotton-seed oil,
9653 linseed oil, lard oil, castor oil, palm oil, rosin oil, and various other oils, the names of which I am not familiar with. They seem to have included under the general heading "Petroleum and other oils" all the oil shipments we have tabulated from the railway statistics.

Q. Do you find anywhere in this connection linseed oil or cotton-seed oil specifically mentioned?—A. It is not in the list.

Q. Or lard oil or pine tar oil?—A. They are not in the list, unless they are included under the heading "Petroleum and other oils."

Q. Have you ascertained what the cotton-seed and linseed oil tonnage was for the year ending June 30, 1904?—A. I have obtained some information on that subject; yes, sir.

Q. And from what source?—A. From the Oil, Paint and Drug Reporter, and from a pamphlet issued by the Bureau of Statistics of the United States Government.

Q. What is the Oil, Paint and Drug Reporter—a standard trade publication?—A. It is a standard trade publication, issued in the interests of the paint, oil, and drug dealers. I imagine oil dealers other than petroleum oil dealers.

Q. I show you defendants' Exhibit 106. Please state what that is.—A. Defendants' Exhibit 106 is a statement of cotton-seed oil tonnage compiled from the Oil, Paint and Drug Reporter for the year 1904. It shows the amount of seed produced, the amount crushed, the crude oil produced, and the refined oil produced, which I figure to be 1,037,846 tons.

9654 Q. And have you also endeavored to ascertain the linseed-oil tonnage used in paints and varnishes, as shown by any bulletin of the Department of Commerce and Labor?—A. I have.

Q. I show you defendants' Exhibit 107. Please state what that is.—A. Statement of the railroad tonnage in petroleum and its products of the defendant companies in the year 1904.

Q. That is the heading of defendants' Exhibit 107?—A. Yes.

Q. Now, please state how you have worked that out.—A. I first took the tonnage of petroleum and other oils shown in the Interstate Commerce publication as being 4,809,349 tons. From that I deducted "other oils." Cotton-seed oil tonnage, per Oil, Paint and Drug Reporter, 1904, 1,037,846 tons; linseed oil used in paints and varnishes in 1905, per Department of Commerce and Labor Bulletin 57, shown in gallons, equivalent in tons to 76,527 tons.

Q. You mean by that that you took the Bulletin 57 of the Department of Commerce and Labor for the year 1905 and in the making up of this table you have assumed that the tonnage in 1904 was substantially what it was in 1905, that being the only document available for the investigation?—A. I was unable to find anything of that kind for 1904.

Q. Now, how did you determine your last item, "Other oils, estimated, 194,976 tons?"—A. I studied the situation as carefully as I could, and by taking various tables that I have of weights of oils I concluded that castor oil and palm oil and oils of that kind would perhaps run close to 200,000 tons. From such inquiries as I

9655 could make among railroads and dealers, they thought that was a very reasonable conclusion.

Q. And how did you hit upon 194,976? Was that in order to make your total petroleum-oil tonnage come out in round ton numbers?—A. Yes; very largely.

Q. That is, instead of taking 200,000 as your estimated figure on other oils, you took a figure a few thousand less than 200,000, so as to bring out your total petroleum-oil tonnage in round numbers?—A. That is corect.

Q. Now, what do you find, so estimating, the total petroleum-oil tonnage to have been in the year 1904?—A. 3,500,000 tons.

Q. I presume, Mr. Felton, that in making up these figures, getting at these results, and in using your method of estimation, your long railroad experience was of use to you, was it not?—A. That is true. After long association with traffic one gets ideas in one's head that seem to come naturally to one's self, conclusively.

Q. As part of the business.

Mr. KELLOGG. That includes taking rebates, I suppose?

WITNESS. I don't know that the question of taking rebates is up just now.

Q. Assuming that petitioner's proof in this case shows that the defendant companies did from 80 to 85 per cent—say 82½ per cent—of the petroleum business of the country, what did you work out in that connection, as shown by this exhibit?

Mr. KELLOGG. I want to object to that (he is testifying from a statement) until we find out the basis on which he made up the statement. He has not testified to all of that basis yet, and he is
9656 testifying to conclusions before stating the authority. I am not going to be technical about any authentic publication, but I would like to ask some questions about that before that is offered in evidence.

Mr. ROSENTHAL. Let us get through with the exhibit first.

Mr. KELLOGG. And I would like to have it considered that I object to the answers which are conclusions from that paper until I show the basis on which it is made up.

Q. Go ahead, Mr. Felton.—A. Assuming that the defendant companies did 82½ per cent of the petroleum-oil business, that would indicate they did a business of 2,887,500 tons. From the best knowledge I could get by making careful inquiries, I state that of the defendant companies' oil business, the strictly local traffic going to the local stations, noncompetitive points, is 20 per cent.

Q. The total business?—A. Yes. I have deducted that 20 per cent, making 577,500 tons, from the amount just previously stated, and that leaves a total competitive tonnage of defendant companies of 2,310,000 tons.

Q. What percentage is that of the total railroad tonnage of the United States?—A. Thirty-six one-hundredths of one per cent.

Mr. ROSENTHAL. I offer defendants' Exhibit 107 in evidence.

Mr. KELLOGG. Before that is offered in evidence, I would like to ask some questions about the way that has been done.

Mr. ROSENTHAL. I have no objection to your asking questions as to the manner in which it is made up. I shall object to your cross-examining generally upon it at this point.

Mr. KELLOGG. When you finish that subject of railroad sta-
9657 tistics, I should like to cross-examine under our arrangement.

Mr. ROSENTHAL. Let us cross that bridge when we reach it.

Mr. KELLOGG. Then, let me ask a few questions. I would like to request that counsel give us copies of these exhibits, the same as we have always given them copies. We can't use the originals; the examiner has them, and it is a very easy matter to make two copies so as to accommodate us.

Mr. ROSENTHAL. The trouble about that is this: those are all made up, and whatever other copies we have here are now in these bound volumes of our brief. We will be very glad to furnish you with whatever copies we have, as we have always done heretofore.

Mr. KELLOGG. Yes.

Mr. ROSENTHAL. Although I have no distinct recollection of ever having gotten any copies from you, Brother Kellogg.

Mr. KELLOGG. I think we always gave you copies, unless they were original tariffs and could not be copied.

Mr. ROSENTHAL. But I have no objection.

By Mr. KELLOGG:

Q. Referring to defendants' Exhibit 106, you got the seed-oil tonnage from what report? Please state, so I can find it.—A. The Oil, Paint and Drug Reporter for the year 1904.

Q. It is a weekly publication, isn't it?—A. I haven't it with me now, but I have it somewhere. I found in that——

Q. I would like to know whether that is a monthly, weekly, or yearly publication, and from what volume and number you
9658 got it, so we can find it.—A. All right.

Q. Bring it in, will you, please?—A. Yes, sir.

Q. Now, you added together crude oil produced and refined oil produced. Isn't the refined oil produced from the crude?—A. Well, I understand not. I understand there is considerable crude oil shipped. The crude oil is not refined at the wells or the crushers. The crude oil is shipped to some place, refined, and then the refined oil shipped.

Q. The refined oil is all made from the crude oil, isn't it?

Mr. ROSENTHAL. Do you mean the refined petroleum?

Mr. KELLOGG. No, the refined cotton-seed. He is talking now about cotton-seed oil. The refined oil is all made from the crude?

WITNESS. I understand that is correct.

Q. Now, you assumed that all the production of crude was first transported on the railroads?—A. I did.

Q. And then it was refined and transported again?—A. I did.

Q. How do you know that is true?—A. By making inquiries I found that as a rule the crude is not refined at the crushers.

Q. Where did you make that inquiry?—A. I could not say just at present.

Q. Now, you know the refinery down at Houston, Texas, out of town about a mile or so?—A. I don't know whether there is one there or not.

Q. There is a very large cotton-seed oil refinery there, isn't there?—A. I don't know.

Q. And aren't the refinery and the crusher and everything right on the same grounds and in the same building?—A. I don't know.

9659 Q. You simply guessed at this, did you?—A. From such inquiries as I could make and such answers as I could get, that statement is correct.

Q. Very well, but where did you make your inquiries?—A. I made it of some cotton-seed oil men, and requested my assistant to make inquiries on the subject, and those figures were made up.

Q. Of whom did you inquire?—A. The inquiries were made through the office of the Standard Oil Company of Indiana and the American Cotton-seed Oil Company here.

Q. And that is all you know about whether that is correct?—A. That is all I know.

Q. The 20 per cent of purely local shipments, you mean shipments made over a railroad to a point where no other railroad could carry the product?—A. That is correct.

Q. Not competitive?—A. That is correct.

Q. How did you get at that?—A. I got at that by making inquiries of people in charge of shipping at the different refineries, and they advised me to that effect.

Q. For instance, you would call all shipments of oil from Whiting to a station south of the Ohio River, where there was only one railroad at that station, as noncompetitive shipments, would you?—A. No, that was made to stations on the road of first instance, from all distributing points.

Q. I don't know as I understand you.—A. Anything that went south of the Ohio River from Whiting would be called competitive, but if it went to a local station on the Northwestern, or

9660 the St. Paul, or the Great Western, they would call it local.

Q. That is, where there was no other road reaching that station?—A. Yes, sir.

Q. For instance, if there were two stations near together on different railroads, where you could market it from either town, you would call that noncompetitive?—A. If it went to a local station it was included in that local list.

Mr. KELLOGG. I object to defendants' Exhibits 106 and 107.

By Mr. ROSENTHAL:

Q. I show you defendants' Exhibit 108. Please state what that is.—A. Comparative statement of the number of tank cars in use in the United States for the transportation of petroleum and its products on the first day of January in the years 1899, 1905, and 1908 by the Union Tank Line and the Waters-Pierce Oil Company and by other companies and railroads than the two named.

Q. That is, you first caused to be compiled a table showing the number of tank cars in use January 1, 1899, and their respective percentages, comparing the Union Tank Line and the Waters-Pierce with the tank-line cars of other railroads and other companies, and then you have done the same thing for January 1, 1905, and January 1, 1908, have you?—A. Yes, sir.

Q. January 1, 1899, how many tank cars were in use by railroad companies and others, excluding the Union Tank Line and the Waters-Pierce Oil Company?—A. 3,881.

Q. How many tank cars were then owned and operated by
9661 the U. T. L. and the Waters-Pierce?—A. 6,213.

Q. That is, the U. T. L. and the Waters-Pierce then had 62 per cent——A. That is correct.

Q. Of the total number of tank cars in operation in the United States, and the outsiders 38 per cent?—A. That is correct.

Q. January 1, 1905, what were the respective percentages?

Mr. KELLOGG. One moment. I think it is fair for him to state where he gets this information. I don't want to take any time to object to it.

Mr. ROSENTHAL. Let me show that in my own way.

Mr. KELLOGG. May I enter an objection? and I will show that by cross-examination.

Q. January 1, 1905, what were the respective percentages?—A. Cars owned by companies other than U. T. L. and Waters-Pierce Oil Company, 48 per cent; cars owned or operated and controlled by U. T. L. and W. P. O. Co., 52 per cent.

Q. And on January 1, 1908?—A. Other than U. T. L. and W. P. O., 49 per cent; U. T. L. and W. P. O., 51 per cent.

Q. U. T. L. stands for Union Tank Line?—A. That is correct.

Q. So that the number of tank cars owned and operated by the U. T. L. and Waters-Pierce has decreased from 62 per cent, on January 1, 1899, to 51 per cent, on January 1, 1908?—A. That is correct.

Q. Where did you get these figures from to make up this table?—A. This statement was compiled, so far as the Union Tank Line is concerned, from the Union Tank Line records.

9662 Q. And is accurate?—A. And is accurate. So far as the other cars are concerned, the records were made up from the Tank Gauge Hand-Book of the date shown on this statement, issued by Mr. J. F. Tucker, chairman of the Central Freight Association.

Q. What is the Tank Gauge Hand-Book?—A. It is a book issued by the Central Freight Association, showing the number of tank cars owned by various owners throughout the country.

Q. That is, in the Tank Gauge Hand-Book you have the name of every owner of tank cars and the numbers of the cars owned by the respective owners, and their tankage, have you not?—A. That is correct.

Q. And that is in universal use by the railroad systems of the country, is it not?—A. Yes, sir.

Q. So that as a particular tank car passes over a railroad, by a comparison between the number of the tank car and the number as shown in this Tank Guidebook, you get the number of gallons capacity of that tank car?—A. That is correct.

Q. And it is an official railroad freight publication, so used?—A. Yes, sir.

Mr. ROSENTHAL. I offer defendant's Exhibit 108 in evidence.

By Mr. KELLOGG:

Q. You put down in your heading the number of cars in use in the United States for the transportation of petroleum and its products. You do not pretend to say that the cars owned by the railroads other than the Union Tank Line and the Waters-Pierce Company are used exclusively for the transportation of

9663 petroleum and its products?—A. I do not understand that railroad companies own tank cars for anything but the transportation of petroleum, and in having that statement compiled I gave most positive instructions to exclude the numbers of any cars that might belong to vinegar, chemical, or other concerns.

Q. Who made up that statement?—A. It was made up by an experienced clerk in the Union Tank Line office.

Q. Now, don't they use these cars for transporting cotton-seed oil and other kinds of oil?—A. I understand not. The cotton-seed oil people own their own cars, and the cotton-seed cars used in the transportation of cotton-seed oil are not included in that statement.

Q. They are not?—A. No, sir. That is, the cars owned by the cotton-seed oil shippers. For instance, the cars of the American Cotton-Seed Company are not included in that statement.

Q. Another thing: All cars used by the railroads for the transportation of crude petroleum are in there?—A. I don't quite get the question.

Q. You know there are a large number of cars used by railroads, especially in California and Texas, for transporting crude petroleum?

Mr. ROSENTHAL. Tank cars?

Mr. KELLOGG. Tank cars; yes.

A. The railroad equipment is in that list, but those cars are available for shippers other than railroads.

Q. Isn't it a fact that a large number of cars in the last

9664 few years have been purchased by railroads for the purpose of transporting crude petroleum in Texas and in California?—A. I don't know to what extent that is true.

Q. Well, you know in a general way that is true, don't you?—A. I know the railroads have added materially to their tank-car equipment within the last few years.

Q. You know, too, don't you, that the percentage of refined oil transported by the Standard Oil Company and the independents has not materially changed in ten years?—A. I don't know anything about that.

Q. You have not looked into that?—A. No, sir.

Q. But you do know that the railroads in California use crude petroleum, don't you?

Mr. ROSENTHAL. I am going to object to general cross-examination upon that exhibit. I have no objection to your cross-examining as to the source of his information in connection with the making up of these figures, but any general cross-examination at this time I shall object to.

Mr. KELLOGG. That is in connection with his source of information.

Mr. ROSENTHAL. You can ascertain the source of the figures, and then if they are not satisfactory to you, you can object to the exhibit.

Q. You say you got this from the hand-book. It is a gauge-book, isn't it?—A. Tank-Gauge Hand-book it is called.

Q. It gives the number of the car, and opposite that the weight of oil that it will carry?—A. That is correct, and the number
9665 owned by each respective owner and the name of the owner of the car at the head of the list.

Q. Yes; but there is a list of cars with the number opposite, isn't there?—A. That is correct.

Q. Now, did you take the highest number as the number owned by the railroad, or did you count each one?—A. What do you mean by "the highest number?"

Q. There is a page in that Tank Gauge-book, say car No. 1000, Union Pacific Railroad.—A. Each one was counted.

Q. Wait a moment.—A. I get your question. Every car number was counted.

Q. Because, you know there are a great many vacancies.—A. Yes, sir; my instructions were to carefully count every car and carefully eliminate every car that was not available for the transportation of petroleum.

Q. Your information that these cars are used for the transportation of petroleum, you simply got that from inquiry, did you?—A. Which cars do you refer to?

Q. These general railroad cars.—A. Those were taken out of the gauge-book.

Q. And you assumed that they were all used for the transportation of petroleum?—A. As I say, I gave instructions, and I was assured that all cars that were shown in the gauge-book as set aside for molasses people and vinegar people and cotton-seed oil and linseed oil were not included in that statement.

Q. How are you going to tell from the gauge-book what they are used for?—A. Because the name at the top of the page shows the owner, and by the name of the owner you know what his business is.

9666 Q. Wait a moment. The railroad company would not state in the gauge-book, where the Union Pacific owned the car, whether that car was used for petroleum or something else, would it?—A. The railroad cars were added after being carefully counted as a whole.

Q. That is what I thought. And there is nothing in the gauge-book to show what the railroad company uses them for?—A. That is true.

Mr. ROSENTHAL. He stated long ago that he added all of the railroad tank cars.

Mr. KELLOGG. I object to the exhibit.

Q. What gauge-book was that? I don't remember.—A. The Tank Gauge Hand-book of the Central Freight Association for the years named in this exhibit.

Q. Have you got it with you?—A. No, sir; I have not. There are three of them. I haven't them with me.

Mr. ROSENTHAL. I offer defendants' Exhibit 108 in evidence.

By Mr. ROSENTHAL:

Q. Mr. Felton, among other things, it is charged in the petition filed in this case that since the year 1882 there has been a conspiracy between the defendants and the various railways of the country and the directors, officers, managers, and agents thereof, to obtain preferential rates and discriminations over competitors. I would like to have you tell us, using your knowledge as an old railroad man and as a freight tariff expert, how many men in a railroad office have to do with the matter of rates?—A. The general matter of rates?

9667 Q. Yes. The least number of men that would have to do with the making of a discriminatory rate, if you please.—A. Oh, I should say four or five—at least five.

Q. And who would they be?—A. First, there would be the active traffic head, whatever his title might be; then the auditor and treasurer must know, if the discrimination be of a nature that would go to them; then the traffic man in a case of that kind always takes one or two of his subordinates or associates into confidence with him, so they will know what is going on; and then, unless the traffic man makes a clerk of himself, some one or two clerks must make up the statement.

Q. And the rate clerk?—A. Yes. I should say that five was a very reasonable estimate.

Q. That is, if a railroad company should make a discriminatory rate, that involves at least five men knowing of that discrimination?—A. On that particular road; yes, sir.

Q. And on 2,104 railroads, if there was any such general conspiracy as is alleged, there would be about ten thousand men throughout the country that would know of this gigantic conspiracy?—A. That is correct.

Q. How are rates made by railroad companies in this country today, and how have they been made for the past ten, fifteen, or twenty years, to your knowledge?—A. Very largely in cooperation with other railroads.

Q. Through freight associations?—A. Yes, sir.

Q. Can you name the different freight associations that there are and have been during those years, existing in this country?—A. I can recall the more prominent. There is the Western
9668 Freight Association. That very generally includes the territory west of the——

Q. Before you get to that, do you remember how many different general freight associations there are in the country?—A. There are something like nineteen or twenty of the more prominent ones.

Q. In addition to that, are there local freight associations?—A. In addition to that, there must be twenty or twenty-five city freight committees, like the Chicago Freight Committee, passing on rates made from Chicago to certain points, the Buffalo Freight Committee, etc.

Q. How do these freight associations act in the way of making up rates?—A. Well, that is a pretty broad question.

Q. I mean can you give the court in this record here some idea of how tariffs are made up by a given freight association?—A. In the earlier part of my testimony I outlined the method that was carried on just after the interstate-commerce law came in in 1887. After those preliminary meetings were held and basic rules were laid down and the contentions of the various roads were thrashed out, sometimes by fierce wars and sometimes in other ways, rates got to a pretty reasonable basis; and then the procedure was (and I think I am coming to your question now) that these freight associations held meetings at stated intervals to consider various subjects. As a rule a call (so called) was issued for such meetings, the calls giving somewhat in detail the subjects that were to be considered. Copies of the calls were sent to all the railroads interested, so that they might
9669 thoroughly acquaint themselves with the circumstances concerning that particular traffic on their road, and then, either through subcommittees or in open meeting in the first instance, but finally in open meeting, all the subjects enumerated in that call were discussed, voted on, and some decision arrived at as to issuing the rate or whatever the roads decided was best to do.

Q. And the making of rates, in the first instance, then, was the result of conferences of that general character?—A. That is correct.

Q. Were those meetings of frequent occurrence?—A. Yes; very. I think I am perfectly reasonable in saying that there is a freight conference meeting of some kind in Chicago every day in the week except Saturday with some railroad. Railroad traffic men have stated to me that it was almost impossible to properly attend to their office affairs by reason of being obliged to attend so many freight meetings.

Q. And these meetings, as I understand, are for the purpose of determining rates and determining rules and regulations with respect to the transportation of property?—A. That is correct.

Q. Have you caused to be prepared a map of the United States showing the different principal freight associations?—A. I have.

Q. And the territory covered by each association, respectively?—A. Yes, sir.

Q. I show you defendant's Exhibit 109. Is that the map that you have just described?—A. Yes, sir.

9670 Q. Generally speaking, what does that show?—A. A map showing approximately the territories of the principal freight-traffic associations in the United States.

Q. I find on the right-hand margin of defendant's Exhibit 109 certain items running from 1 to 20. What does that mean?—A. Opposite those numbers are the names of the freight associations corresponding to the numbers shown in the body of the map.

Q. And what is the significance of the red numbers and the blue numbers on the map?—A. Nothing except to show the confines within the red and blue lines of the various freight traffic associations.

Q. That is correctly made up, Mr. Felton?—A. It is; yes, sir.

Q. And it shows twenty different freight associations?—A. That is correct.

Mr. ROSENTHAL. I offer defendants' Exhibit 109 in evidence.

Q. I show you defendants' Exhibit 110. Please state what that is.—A. Exhibit 110 is a list of important freight traffic associations not shown in the map, defendant's Exhibit 109.

Q. How many are there in number?—A. 27.

Q. That information you took from the Official Railroad Guide of September, 1908?—A. Yes, sir; as shown on the bottom of defendants' Exhibit 110.

Mr. KELLOGG. You mean by local freight associations, for instance, the St. Paul and Minneapolis Freight Association; that is, the

9671 local representatives of the railroads having an association of their own there?

WITNESS. Not always local representatives; sometimes the general representatives.

Mr. KELLOGG. It is usually the local representatives?

WITNESS. Usually, yes, sir. I do not mean the local agent at the receiving station. I mean the commercial agent or somebody in charge of the traffic at the city.

Mr. KELLOGG. For instance, in Baltimore, the Baltimore and Ohio Railroad and the Pennsylvania Railroad and certain other roads each has a commercial agent in charge of the traffic at that point?

WITNESS. But those associations are not always limited to the commercial agents; very largely the assistant general freight agent or division freight agent is a member of such committee. They are divided up, Mr. Kellogg.

Mr. KELLOGG. Yes, I understand.

Q. As I understand it, the railroads within a given territory join together in the making up of a given freight association?—A. That is correct.

Q. In the event of an open freight discrimination within a given territory, not only the particular road that makes that open discrimination would know of it, but every other railroad that is a member of the association?—A. Yes, sir.

Q. What do you mean by a gateway as a freight term?—A. A gateway is a city that is a point of contact between two associations, through which a large volume of traffic originating or interchanged between those associations passes. They are very often natural
9672 gateways as well as railroad territorial gateways.

Q. What do you mean by a natural gateway, for example?—A. Well, Cincinnati, Louisville, and Evansville are natural gateways as between the northern States bordering on the Ohio River and the southern States bordering on the Ohio River.

Q. What do you call the other gateway?—A. The territorial gateway?

Q. Yes.—A. The conditions governing traffic south of the Ohio River are admitted to be considerably different from those north of the Ohio River, and so the freight associations are divided at the river. North of the three points I have named is the Central Freight Association, and south is such Southern Association as may be shown on that map. So these cities that primarily were natural gateways become territorial gateways.

Q. St. Louis or East St. Louis, for example; is that a gateway?—A. That is a gateway between the East and the West, between the Central Freight backed up by the Trunk Line Association on the East and the various western traffic associations on the West.

Q. You mean by that, among other things, as I understand you, that a rate for example from a point north of the Ohio River in Ohio would be made on freight that was consigned say to some point in Alabama, first, to Cincinnati and then from Cincinnati beyond?—A. That is a correct example; yes, sir.

Q. Taking the three grand divisions of the North, the West, and the South, have there been official classifications with respect to the transportation of freight adopted in those grand divisions?—A. Yes, sir.

Q. What are they?—A. East of the Mississippi, south of its
9673 junction with the Ohio, and south of the Ohio and Potomac rivers the classification known as the Southern Freight Classification very generally prevails. North of that boundary and east of Chicago and a line running southwest from Chicago to St. Louis, including all the eastern States and the New England States, the so-called Official Classification governs. North and west of those boundaries the Western Classification prevails.

Q. Is freight classified in its transportation?—A. Yes, sir.

Q. In addition to such classification of freight, what other way is freight transported?—A. Heavy and so-called staple commodities are very largely transported on so-called commodity tariffs.

Q. What do you mean by a commodity tariff as distinguished from a class tariff?—A. Where the application of the limited number of class rates to a very large number of articles covered in the classification does not meet commercial conditions, the roads take the particular article under consideration (to use a technical phrase) "out of the

classification" and issue a tariff governing that particular article, which they call a commodity tariff.

Q. Take the Western Classification. Do you remember how many classes there are in that classification?—A. Ten, as I remember; 1 to 5, and A to E, all inclusive.

Q. And that means that all freight commodities in the first instance are divided into ten classes, from 1 to 5 and from A to E, inclusive?—A. Yes, sir.

9674 Q. And each particular class is given a rate, is it?—A. Yes, sir.

Q. And that of course makes what is known as the class rate?—A. The class rate.

Q. Now, the commodity rate differs from that how?—A. The commodity rate——

Q. A given article is taken out of a class, is it not?—A. Yes.

Q. And a special rate issued in connection with that commodity?—A. That is correct.

Q. And that special rate then is what is known in freight parlance as the commodity rate?—A. Yes, sir.

Q. In the conduct of the freight commerce of this country is it generally found that class rates are adequate?—A. They are not.

Q. And then what happens?—A. A commodity tariff is issued.

Q. Is that a matter of frequent occurrence——A. It is.

Q. In the administration of the freight business of a railroad?—A. Yes, sir.

Q. State, if you know, whether commodity tariffs are as generally issued now, during recent years, as they were in the earlier years of the operation of the interstate commerce act, or whether freight classification is becoming more perfect and more scientific than it used to be.—A. Does your inquiry cover the period after the enactment of the original interstate law in 1887?

Q. Yes, sir; my inquiry covers the date from 1887 down to the present time.—A. I should say there were more commodity

9675 tariffs to-day, in later years, based largely on the increase in traffic throughout the country and the manufacture of special lines of goods.

Q. Is there anything unusual, then, about the issuance of a commodity tariff?—A. Absolutely nothing.

Q. It is a matter of daily occurrence, is it not, on every railroad system of the country?—A. Yes, sir.

Q. And I presume it is safe to say that thousands of commodity tariffs are issued every week by the different railroads of the country?—A. Well, I wouldn't want to state a number, but I will say in answer to your question that they are being constantly issued.

Q. By every railroad?—A. Yes, sir.

Q. To cover a given commodity which in that particular instance is taken out of its classification?—A. That is correct.

Q. As between the commodity tariff and the class tariff both existing at the same time, which governs?—A. The commodity tariff.

Q. You described these three classifications, the Western, the Southern, and the Official. Is there any relation between that system of classification and the fact that rates are commonly made only to the different gateways leading into these different territorial divisions?—A. It is due very largely to the different bases on which those three principal classifications are constructed.

Q. Now explain that a little more in detail, Mr. Felton.—A. The so-called Official Classification has but six classes.

9676 Q. That is, the classification that is used north of the Ohio and Potomac and east of the Mississippi?—A. Yes, sir; 1 to 6—1, 2, 3, 4, 5, 6. The 8 or 10 thousand articles, I should say—I have not counted them—that are enumerated in that classification are divided up under the six groups of rates. The Western Classification, as I before stated, is made up into ten classes. The Southern is made up into six. The Southern Classification contains quite generally an any quantity clause, which is practically ignored by the Official Classification, and so it would seem that the construction of those three classifications (answering your question) had to do with the breaking of rates at the territorial confines of those territories.

Q. That is to say, a given article originating at Chicago would be shipped under a class rate, would be classified, if you please, under class 3 of the Official Classification and might take an entirely different class if it were shipped into the Southwest under the Western Classification.—A. That is correct. Well, not from Chicago. The Western Classification, as I previously stated, applies from Chicago.

Q. I use that merely as an illustration without having reference to any particular exception relating to Chicago.—A. Yes, sir. That would be true of other eastern cities.

(A recess was here taken until 2 o'clock p. m.)

9677 Q. Mr. Felton, are you familiar with the location of the different refineries of the Standard Oil Company?—A. I am.

Q. Generally speaking, what do you say as to whether there is a refinery or a distributing station of one or more of the competitors of the Standard at every place, or within a reasonable distance of every place where a Standard refinery is, taking the same rates that the Standard refinery takes?

Mr. KELLOGG. That is objected to as calling for his conclusion.

Mr. ROSENTHAL. I will follow that up more specifically. I want to get the general question in first.

A. There is a so-called independent refinery at every town or city where the Standard has a refinery, or in the same locality or rate-making territory, with the exception of Whiting, Indiana.

Q. Taking the same rates as the Standard refineries take?—A. Taking the same rates as the Standard, with perhaps some slight exception. For instance, a so-called competitive refinery might not be right at the same spot that the Standard was, and the Standard, perhaps, would have rates to one or two near-by points that might be

a little less or a little more than the competitive refinery; but generally speaking, that is correct.

Q. With respect to the fields as a whole, the rates would be the same?—A. Yes, sir.

Q. I will follow that up more specifically in a few moments. Do you know the Wellsville Refining Company, or do you know of the Wellsville Refining Company, at Wellsville, New York?—A. Yes; the Wellsville refinery is at a town that sometimes seems to bear the name of Stannard's, and sometimes Wellsville, at the junction
7678 of the Buffalo and Susquehanna Railroad with the Erie Railroad in New York State.

Q. Has that junction point substantially the same rates into New England and Northern New York territory as Olean?—A. Practically the same, with some few exceptions.

Q. The Wellsville Refining Company is not a Standard Oil refinery?—A. As far as I can learn, it is not.

Q. Have you caused to be compiled a list of all the refineries in the country, Standard Oil and so-called independents, showing their locations?—A. I have.

Q. Is that list the list shown in defendant's Exhibit 111?—A. It is.

Q. The first column on the left shows the geographical location, does it not?—A. Yes, sir.

Q. That is under the head of "Location and district?"—A. Yes, sir.

Q. Under the head of "Standard" you have the names of the Standard Oil companies?—A. That is correct.

Q. And under the head of "Independents" you have all of the non-Standard Oil companies?—A. Yes, sir.

Mr. ROSENTHAL. I offer defendant's Exhibit 111 in evidence.

By Mr. KELLOGG:

Q. Where did you get this information?—A. Partly from my own information and partly from Mr. H. C. Folger's office.

Q. I notice the first Standard Oil refinery named here, in New York Harbor, and opposite "Independents," Valvolene Oil Company, Leonard & Ellis, and Edgewater Oil Company. Are not those three that I name all one?—A. I do not know, sir.

9679 Q. Then you don't know anything about whether that is correct or not?—A. As I say, some of that came from my own knowledge and some I got from Mr. H. C. Folger's office.

Mr. ROSENTHAL. You know that those refining companies are there; that is, the Valvolene——

WITNESS. I know there are such companies doing business in New York Harbor.

Q. Aren't they all one company?—A. I don't know, sir.

Q. The Valvolene Oil Company, Leonard & Ellis, Edgewater Oil Company, are all one refinery, aren't they?—A. I don't know, Mr. Kellogg. I have answered that three or four times. I have not altered the statement or made any additions to it since I received it.

Q. Then that part of this information that I have asked you about, you do not know anything about that?—A. That was given to me at my request, like statements that Mr. Durand put in.

Q. Is there a Crystal Oil Works that has a refinery at Buffalo?—A. I could not say whether they have a refinery or whether they are compounders, or whether they are shippers and jobbers.

Q. You don't know?—A. I do not know, sir.

Q. Is the Wellsville Refining Company a refinery?—A. I understand there is a refinery at Wellsville.

Q. How far from Rochester is that?—A. It is not on the direct line. I should say across the country it is perhaps within fifty miles of Rochester.

Q. How far from Olean?—A. Perhaps within the same distance. I have not figured out the distances, to make that clear.

9680 Mr. ROSENTHAL. If you are going to examine him as to the manner in which he made up this statement, I have no objection.

Mr. KELLOGG. It is incompetent if he can not testify that is correct.

Mr. ROSENTHAL. That may be.

Mr. KELLOGG. And I want to show that. I have a right to show it.

Mr. ROSENTHAL. I am not questioning your right. I am questioning the time in which you may show it.

Q. Now, taking the third head, the Atlantic Refining Company at Philadelphia, opposite that you have Crew, Levick & Co., Sunlight Oil Refining Company, Enterprise Oil Works, Sun Oil Company, Pure Oil Company, Gulf Refining Company. Are there seven refineries or only two in that whole list?—A. They are either refineries or storage facilities, or plants at which they gather together business and make shipments.

Q. Yes; either sellers of oil, or storers of oil, or manufacturers?—A. Or refiners of oil.

Q. And you don't know whether they are separate concerns, or owned by one concern?—A. I could not say, sir.

Q. Then, this heading "Statement showing the location or district in which the various refineries of the several defendant companies are located, and also the location of the refineries of so-called independents," you do not pretend is correct of your own knowledge?—A. I have not been to those places and personally investigated what was there; no, sir.

9681 Q. This statement is not confined to refineries either, is it? Some of them are merely shippers?—A. I do not know; I asked for a list showing where there were competitors, and that was the information that I received.

Q. Then your information as to the correctness of this is obtained from other people?—A. That is correct; yes, sir.

Mr. ROSENTHAL. That is, your information as to the correctness of all of the independent refineries is obtained in part from Mr. Folger?

WITNESS. That is true; yes, sir.

Q. Well, principally from him, isn't it? Where do you have personal knowledge of any independent refinery being located? Name them just as quickly as possible.—A. Without having been there, I am positive that the Gulf Refining Company have either a refinery or a shipping point in the neighborhood of Philadelphia or Marcus Hook, and that is true of Crew, Levick & Co.

Mr. ROSENTHAL. Mr. Kellogg, I suggest at this point that if you are doubtful about the verity of this list, that you enter your objection, and we will follow it up by putting Mr. Folger on somewhere along the line, or some one else who knows definitely concerning this list of independents. I do not want to stop now and have Mr. Felton cross-examined concerning it.

Mr. KELLOGG. Mr. Rosenthal, I do not ask you to produce a man who has seen the refinery. If you will produce a man who has accurate information, I am perfectly willing he should testify from
9682 that; but I would like to have somebody who knows about this.

Mr. ROSENTHAL. We will produce a man on that list of independents who will be able to testify in accordance with the rules of evidence to its correctness.

Mr. KELLOGG. I object to it as incompetent.

By Mr. ROSENTHAL:

Q. Besides these other refinery points named, are there other shipping points from which the Standard ships its oil?—A. The Standard makes shipments from East Boston, Massachusetts, Providence, Rhode Island, Wilson's Point, Connecticut, and from Wilmington; from Savannah and Charleston, South Atlantic Coast ports.

Q. From East Boston, Providence, Rhode Island, and Wilson's Point, Connecticut. Those are seaport points of shipment reaching into the New England territory?—A. That is correct.

Q. Are there any competitors that have any shipping point on the New England coast?—A. The Gulf Refining Company are at Beverly, Massachusetts.

Q. How far is that from Boston?—A. I do not think it is over 20 or 25 miles north of Boston.

Q. And a seaport town?—A. Yes, sir.

Q. And that therefore is a seaport shipping point of a competitor located in the same general locality as the Standard's East Boston shipping point?—A. That is correct.

Q. And is there any competitor that has a shipping station at Bridgeport, Connecticut?—A. I understand the Sun Oil Company have large tanks at Bridgeport.

Q. Approximately how far is that from Wilson's Point,
9683 Connecticut?—A. Perhaps 30 or 40 miles.

Q. Wilson's Point being a Standard Oil point of shipment?—A. Yes, sir.

Q. Are all railroad tariffs printed, and have they been during the 20 or 30 years that you have been in the business?—A. They have not.

Q. In what other forms are they issued?—A. Oh, in a great many forms; mimeographed, hektographed, typewritten or mimeographed or printed prepared sheets; sometimes written out in ink on such forms, and until very recently in any way that best commended itself to the economy and despatch of the man issuing the rate.

Q. Was it a common practice up to within a year or two ago to issue typewritten rate sheets on commodity tariffs?—A. It was.

Q. And there is now a rule of the Interstate Commerce Commission prohibiting that, is there not?—A. That is correct; yes, sir.

Q. How recently was that rule enacted?—A. Since the enactement of the Hepburn law as I recall, and I think within the last year; but I am not quite positive as to that.

Q. Is there always a rate over a line between two given points?—A. Why, not a carefully thought-out or arranged rate to cover all particular traffic. I suppose in most cases that some kind of an omnibus class or general rate, applying directly or under some long and short haul clause, could be found between almost any points, but that rate might not be a rate that could be used, or be a rate
9684 on which business or traffic could be moved.

Q. Why not?—A. Unless it was a rate that had been carefully checked in as a class rate, or had been established as a commodity rate, it would probably be some high rate that would be altogether at variance with the commercial requirements.

Q. Where does the shipper ordinarily get his rate from—the rate clerk of the railroad?—A. Yes, sir.

Q. And is it a matter of common practice to get that rate, in the large cities of the country, by a telephonic request to a rate clerk?—A. That is very common.

Q. Is that so within your experience and observation?—A. Yes, sir.

Q. A shipper desiring to ship a commodity calls up the rate clerk on the telephone and asks for the rate, and then ships on the rate given him by the rate clerk?—A. That is true.

Mr. KELLOGG. I want to enter an objection to the direct leading of this witness. Mr. Felton is not an unwilling witness.

Q. Do I understand that that practice in your experience is and has been a common practice?—A. That is correct.

Q. Have you ever known mistakes to occur in obtaining rates in that way?

Mr. KELLOGG. That is objected to as irrelevant and incompetent.

A. Very many. Of course I am answering that question generally. I do not carry in my mind specific instances of errors of that kind.

Q. These various freight associations that you have de-
9685 scribed this morning, have they officials connected with them?—A. As a rule there is a chairman and a secretary.

Q. And in a general way what are the duties of the secretary, if you please?—A. To keep a record of the proceedings and distribute the same to the members.

Q. Are the railroad companies that are members of these associations under any obligation to make reports of shipments or rates to the association?—A. I have known of such instances.

Q. What do you mean by "blind billing" as a railroad term?—A. You mean in relation to how the waybill is made out?

Q. Yes, sir.—A. Blind billing, as I understand the term, would be simply to show the consignee and the consignor the details as to car number and initial, the lading, possibly the weight, no more; possibly not the weight, nor the rate, nor the amount.

Q. Well, the essential characteristic of blind billing is that it shows no rate, is it not?—A. That is correct.

Q. And what do you say as to whether that has been quite the common practice as you have observed it in your railroad experience?

Mr. KELLOGG. That is objected to. Let him give the cases.

A. I do not think it is or has been a common practice.

Q. And have you known or come in contact with a great many cases of that kind?—A. I have not.

Q. Do you know, in connection with the conduct of these freight associations, why there should be blind billing, if you please,
9686 by one road whose property is transported from one road over another road?

Mr. KELLOGG. Same objection, incompetent and immaterial.

A. The only object of blind billing that I can see—inasmuch as the shipper and consignee never see the waybill, have absolutely nothing to do with the waybill—the only object I can see in blind billing would be perhaps under some conditions where there was a large amount of traffic moving as between two roads, a matter of economy and convenience in accounting, as between those two roads, or for the purpose of preventing a competitive railroad from knowing at what rate the traffic blind billed was carried.

Q. And it would serve that purpose, would it?—A. It would serve that purpose very nicely, I think.

Q. Blind billing, then, means the failure to insert the rate upon the waybill?—A. That is correct.

Q. And the waybill is something that never gets to either the shipper or the consignee, but stays with the railroad company itself? That is true, is it not?—A. That is correct.

Q. Now, would it also serve the purpose of concealing from traffic officers of the freight associations the fact that traffic was being carried at less than the agreed association rate?—A. No. It would not.

Q. Would false billing do that?—A. False billing would; yes, sir.

Q. Tell us how.—A. If there was an agreement between two or more competing carriers to maintain, carry out, charge, and collect certain rates, and if the records of the waybilling agent were open
9687 to a traveling auditor or an inspector of the association, or if there was an agreement that tissue copies of such waybills should be sent to the secretary of such an association, then, of course, the road making a lower rate than the agreed rate must either waybill at the agreed rate or at once give notice to the other road that they

had violated the agreement by billing at a rate less than the association rate.

Q. Do you know of an occasion of that kind within your experience?—A. Cases of where the association managers had access to the railroad billing?

Q. Yes.—A. Yes, sir; I do.

Q. And either by an obligation to send tissue copies to the secretary of the association or by means of traveling auditors—I understand you to say that you know of cases of that kind?—A. I know of one case of that kind; yes, sir.

Q. And the false billing there—that is to say, a billing showing the agreed association rate, whereas as a matter of fact another or a different rate might have been issued, and, if you please, filed with the Interstate Commerce Commission, or issued and not filed—would have the effect of deceiving the association officials?—A. That is correct.

Q. A number of the tariffs introduced by the Government in making out its case show that they were issued to the Standard Oil Company. Is that an extraordinarily unusual method of issuing tariffs?

Mr. KELLOGG. That is objected to. If he knows of any other cases where they were issued that way——

9688 Mr. ROSENTHAL. We will get to that in a minute.—A. In my experience it has been a very common practice. It has been. To-day tariffs are not issued that way.

Three papers were marked "Defendants' Exhibit 112–A, 112–B, and 112–C."

Q. I show you defendants' Exhibits 112 A, B, and C. Please state what they are.—A. 112–A is a document issued by the Boston and Maine Railroad (small type), St. Johnsbury and Lake Champlain Railroad. I will read it.

Q. To what company is it issued?—A. Issued by the Boston and Maine Railroad.

Q. To what company, I say?—A. Issued to the Gulf Refining Company as shippers.

Q. How about 112–B?—A. 112–B is also issued to the Gulf Refining Company as shippers.

Q. By what railroad?—A. Boston and Maine Railroad.

Q. And 112–C?—A. 112–C is issued in the same manner.

Q. And to the same company?—A. And to the same company.

Q. So there are three tariffs, 112–A, 112–B, and 112–C, issued by the Boston and Maine Railroad to a specific shipper, to wit, the Gulf Refining Company?—A. That is correct.

Q. One of the strong independent refineries?—A. Yes, sir.

Q. And I understand you to say that that has been a common practice——A. It has been a common practice.

Q. Until recently, and on all roads, particularly in connection with state tariffs?—A. I do not know as I could say all roads. I can say that I have issued many tariffs like that tariff, and I have seen many

tariffs of that kind, and the matter was such an open one in my
9689 own mind that I did not look any further than to get those three.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibits 112–A, 112–B, and 112–C.

Mr. KELLOGG. These are objected to as incompetent, irrelevant, and immaterial.

Q. Where did you get these, Mr. Felton?—A. At some date, which I do not recall, I sent a note to the Boston and Maine road, asking them to send me copies of their tariffs on oil from Beverly to those points, and I received those in reply.

Mr. KELLOGG. Those are the only ones you got?

WITNESS. Yes, sir.

Mr. KELLOGG. You have no other special rates?

WITNESS. I have not made any inquiry for any others. I do not recall whether that letter was written by me personally or by one of my clerks.

Q. Mr. Schindler, a witness for the Government, while on the witness stand testified that in connection with the transportation of petroleum and the making of petroleum rates the element of risk of loss by fire was an important and material consideration, which, other things being equal, tended to increase the petroleum rate. What have you to say with respect to that statement?—A. In my railroad experience I have attended a great many freight meetings where oil rates were made, and I have never heard of that element being introduced as a factor to be considered in the making of the rate.

Q. Aside from your attendance on meetings, have you ever heard of it?—A. I have not.

Q. In your thirty years of experience as a railroad man,
9690 do you know of that ever having been considered?—A. I can not recall a single instance.

Q. Have you ascertained by any investigation what the average annual fire loss of the various defendant companies is in the transportation of petroleum?—A. I have.

Q. With what result?—A. I have made inquiries along that line, and the answers that I have received justify me in saying that the average loss to all the defendant companies by fire in the transportation of oil does not exceed $25,000 per year. That embraces carloads and less than carload shipments.

Q. Do you know how many pounds of oil there are to a gallon?—A. I do not carry in my mind the weights of all the different grades of oil; but from a railroad standpoint, in the tariffs and classifications of the country, they have quite generally established 6.4 pounds as an actual average per gallon for oil other than crude.

Q. So that it requires an increase of about 16 cents a hundred in the freight rate to make a difference of 1 cent a gallon in the price of oil, does it not?—A. That is correct.

Q. Do you know what the customary price movement of retail oil is, as to whether it moves up or down half a cent or a cent at a time?—A. With the exception of large contracts for fuel oil and gas oil and things of that kind, and taking refined oil largely as a basis for my answer, the price generally breaks at half a cent.

Q. One way or the other, up or down?—A. Yes, sir; rarely if ever at a fraction less than half.

Q. So that a difference of 5 cents per hundred in freight
9691 rate would only make a difference of a third of a cent a gallon in the price of the oil?—A. Of a third of a cent a gallon.

Q. Have you in the course of your investigation, in reading on the general subject-matter of the difficulties of rate-making, the opportunities for mistake and fraud in the transportation of property, come in contact with the pamphlet which I now show you, marked "Defendants' Exhibit 113?"—A. I have.

Q. And have you read that?—A. I have read pretty well through it, not all the way.

Q. Does that accurately portray the situation?—A. I think so, very accurately.

Mr. ROSENTHAL. I offer defendants' Exhibit 113 in evidence.

Mr. KELLOGG. It is objected to as incompetent, irrelevant and immaterial.

Q. Who is Mr. Stickney, the president of the Great Western?—A. Mr. Stickney, I understand, at that time was president of the Chicago-Great Western Railway.

Q. The Standard Oil Company has a refinery at Olean, New York, has it not?—A. I think that refinery to-day is owned by the Vacuum Oil Company. There is a refinery there, but I can not say definitely who owns it.

Q. There is a refinery there, but the stock of the Vacuum Oil Company is largely owned, I think, if not entirely, by the Standard; and the Vacuum Oil Company also has a refinery at Rochester,
9692 has it not?—A. That is correct as I understand it.

Q. And is there also a Standard Oil refinery at Buffalo, New York?—A. Yes, sir.

Q. What railroad runs between Olean and Rochester?—A. It is now a division of the Pennsylvania Railroad.

Q. Known as what?—A. I think the Rochester division.

Q. And it was formerly known as what?—A. The Western New York and Pennsylvania Railroad.

Q. What railroad runs between Olean and Buffalo?—A. A number of years ago the Pennsylvania acquired the Western New York and Pennsylvania, and there is a division running from Olean to Buffalo, called, I think, the Buffalo division, now owned by the Pennsylvania Railroad.

Mr. KELLOGG. Now part of the Pennsylvania?

WITNESS. Yes, sir.

Q. Petitioner's Exhibit 619, a copy of which I show you, has already offered in evidence by the Government. Mr. Schindler

testified at Washington, with that exhibit as the basis of his testimony, in that regard that the rate on petroleum from Olean to Norwood, via Rochester, was 26½ cents; or at least he undertook so to testify on his direct examination. Can you make a 26½ cent rate from Olean to Norwood by way of Rochester from that tariff, Exhibit 619?

Mr. KELLOGG. That is objected to, for the reason that the tariff is the best evidence, and it is a legal question. The question calls simply for the conclusion of the witness on the document.

A. I can not.

9693 Q. Why not?—A. I would have to have a copy of the percentage sheet.

Q. What language is there on the tariff, petitioner's Exhibit 619, that indicates to you the necessity of having the percentage sheet in order to make a rate from Olean to Norwood via Rochester?

Mr. KELLOGG. This may all be taken subject to the same objection?

Mr. ROSENTHAL. Oh, yes; certainly.

WITNESS. There are two absolutely governing warnings on this tariff: To consult the percentage sheet before you name the route, and consequently before you could use the rate. The first warning is on the first page, which, in good-sized type, reads: "Route: In accordance with agreed percentages and as designated within." The second warning to the agent is found on page 3. In the lower part of that page you find "Norwood" under the heading "Stations on Rome, Watertown and Ogdensburg Division N. Y. C. & H. R. R. R. Route in accordance with agreed percentages."

Q. What does that mean, Mr. Felton?—A. That means that the agent at Olean could not possibly use that rate——

Q. Use what rate?—A. The 26½-cent rate, until he had procured a copy of the percentage sheet, to see how it applied.

Q. So that tariff, petitioner's Exhibit 619, standing by itself, does not make a rate of 26½ cents to Norwood from Olean by way of Rochester?—A. That is correct.

Q. Nor can you make any rate at all, as I understand you, from that tariff, from Olean to Norwood via Rochester, without

9694 adding to that tariff the percentage sheet and interpreting the two together?—A. The agent must have had the percentage sheet at the time he quoted the rate and the route.

Q. Why?—A. Because the tariff does not name the route.

Q. What has the percentage sheet got to do with the route?—A. I could not say without looking at it.

Q. The phrase "Route in accordance with agreed percentages" means that this rate is to apply only on the route that is indicated on the percentage sheet?—A. That is correct.

Q. Have you the percentage sheet or sheets referred to in that tariff?—A. Yes, sir; I have.

(Two papers, marked "Defendants' Exhibit 114–A and 114–B," respectively.)

Q. Are the two percentage sheets marked "Defendants' Exhibit 114–A and 114–B?"—A. They are. In looking at this tariff a little more closely an idea comes to me right here that there is a third warning to the agent at Olean to consult the percentage sheet, for the reason that the routing is very clear to all Boston and Albany Railroad stations, names 19 cents to a group of Boston and Albany stations, and says very plainly "Route via Rochester, New York Central Railroad and West Albany."

Mr. MILLER. Some of the stations on the Boston and Albany?

WITNESS. Yes, sir. And then the lower part of that sheet, where it names stations on the Rome, Watertown and Ogdensburg—on which Norwood is located, and under which heading Norwood appears—the agent is instructed to route in accordance with agreed percentages. So he has no option but to consult the percentage
9695 sheet before he establishes the route. I have Western New York and Pennsylvania Railroad percentage sheet No. 221.

Q. Being defendants' Exhibit 114–A?—A. Being defendants' Exhibit 114–A. It seems to have been issued by Edward T. Johnson; at least his name appears there as being at Buffalo, general freight agent W. N. Y. & P. R. R., and it has on it the name of S. Goodman, general freight agent R., W. & O. R. R., New York City. It bears date Buffalo, New York, November 7, 1892. On the second page Olean appears under group E, Western New York and Pennsylvania Railroad stations. Norwood appears under group 5, Rome, Watertown and Ogdensburg Railroad stations. Turning back to the first page, finding group E, group 5, I find a heading, W. N. Y. & P. R. R., groups via Buffalo and Charlotte. Consequently the agent would have no alternative but to route a shipment from Olean to Norwood under that tariff via Buffalo.

Mr. KELLOGG. That is objected to. The division sheet is the best evidence.

Q. Take Government Exhibit 619, corresponding with the tariff which you hold in your hand——A. I have I. C. C.'s No. 459.

Q. Yes, sir; together with the percentage sheet, defendants' Exhibit 114–A. Can you from those two documents or from either one of them make a rate from Olean to Norwood by way of Rochester?

Mr. KELLOGG. Same objection.

A. No, sir.

Q. Why?

Mr. KELLOGG. Same objection.

A. Because the percentage sheet which the agent is instructed by the tariff to use applies only via Buffalo.

9696 Q. What is defendants' Exhibit 114–B?—A. 114–B in Pennsylvania Railroad precentage sheet No. 39, issued by the same Edward T. Johnson, this time as the division freight agent of the B. and A. V. division of the Pennsylvania Railroad, canceling W. N. Y. and P. R. R. percentage sheet No. 221.

Q. No. 221 being Exhibit 114–A?—A. Yes, sir, from which I previously read.

Q. And what is 114–B?—A. A percentage sheet cancelling Exhibit 114–A, under date of August 30, 1904.

Q. Does the tariff, Government Exhibit 619, together with the percentage sheet defendants' Exhibit 114–B, make a rate from Olean to Norwood via Rochester?

Mr. KELLOGG. Same objection.

A. It does not. It makes a rate via East Buffalo.

Q. A railroad agent, then, receiving a carload of oil at Olean, with directions consigning it to Norwood via Rochester, would, as I understand you, be unable to give the shipper a rate by virtue of any of these three documents or all of them taken together?—A. That is correct. Via Rochester.

Mr. KELLOGG. I suppose you know the court has held to the contrary, do you?

Mr. ROSENTHAL. Wait a minute. Don't get into any controversy with Mr. Kellogg on that. The court has not so held yet.

Mr. KELLOGG. It has.

9697 WITNESS. I am not a lawyer. I am only reading from these tariffs, Mr. Kellogg. There is no doubt as to how these tariffs read.

Mr. ROSENTHAL. The court may have held to the contrary, because several witnesses that the Government presented there testified falsely and because the court did not have before it all the facts. That may have induced the ruling of the court.

Mr. KELLOGG. The court had the document before it and no witness could testify falsely as to those, and you know it.

Mr. ROSENTHAL. Well, I know that some of them did.

Mr. KELLOGG. There are a great many things you pretend to know.

WITNESS. The man that made the tariff swore that it could not apply via Rochester—the man that issued it under his own name.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibits 114–A and 114–B.

Mr. KELLOGG. I wish to ask one question. Were Exhibits 114–A and 114–B ever filed with the Interstate Commerce Commission?

WITNESS. I do not know.

Mr. KELLOGG. You know that they were not, do you not?

WITNESS. I do not know that they were not and I do not know that they were.

Mr. KELLOGG. They are marked "Not to be posted." What does that mean?

WITNESS. But it does not follow——

9698 Mr. KELLOGG. What does that mean?

Mr. ROSENTHAL. That raises at once the very question that I have in mind. I am going to develop in the next hour just what the phrase "Not to be posted" on tariffs means, and introduce a line of tariffs showing that.

Mr. KELLOGG. Very well.

Mr. ROSENTHAL. There is no claim by us that those percentage sheets were filed; on the contrary, as I remember Mr. Schindler's

testimony in Washington, he testified that they were not and that it was not the practice to file percentage sheets, and the rule of the Commission was that percentage sheets should not be filed excepting where they were expressly called for by the Interstate Commerce Commission. I am right about that, am I not?

Mr. KELLOGG. That is true; but I do not think he testified to it.

Mr. ROSENTHAL. I understand he so testified.

Mr. KELLOGG. If it may be admitted these were not filed with the Interstate Commerce Commission that is all I want.

WITNESS. Of course I do not know.

Mr. ROSENTHAL. The practice is not to file percentage sheets, is it not?

Mr. KELLOGG. Let it appear that they were not filed.

9699 Mr. ROSENTHAL. The statement I just made is accurate, is it not? In so far as the practice of the Commission is concerned, it is not the practice to file percentage sheets?

Mr. KELLOGG. I think generally that is true.

Mr. ROSENTHAL. Mr. Crossland, how is that?

Mr. CROSSLAND. A few are filed, but the Commission does not require them to be filed.

Mr. ROSENTHAL. My statement is that it is not the practice to file them, and unless the Interstate Commerce Commission expressly requires them to be filed they are not filed.

Mr. KELLOGG. These were not filed.

WITNESS. Mr. Crossland's answer explains why I could not answer yes or no to your question, Mr. Kellogg. There was no disposition to get away from it.

Mr. KELLOGG. I object to Exhibits 114–A and 114–B as incompetent, irrelevant, and immaterial.

Mr. ROSENTHAL. Not upon the ground that they were not filed, however?

Mr. KELLOGG. Yes; on the ground that they were not filed with the Commission.

Mr. ROSENTHAL. All right. That is the position I wanted you to take, because that is our position.

Mr. KELLOGG. I do not want to compel Mr. Felton or Mr. Rosenthal to prove that the railroad company issued them, that is all.

9700 Mr. ROSENTHAL. Yes, I understand. Certainly not. It may be assumed that they are authentic documents issued by the railway company?

Mr. KELLOGG. Yes, that is the point.

Mr. ROSENTHAL. And that is not questioned by Government counsel?

Mr. KELLOGG. No.

Q. What is defendants' Exhibit 115?—A. It purports to be tariff circular No. 4–A issued by the Interstate Commerce Commission, Washington, dated September 29, 1906.

Q. Announcing several rules of the Commission—does it not?—A. It announces three different rules, and perhaps in order to make them appear very clear I should read the first paragraph.

Q. If you will, yes.—A. It reads as follows: "The Interstate Commerce Commission, in answer to numerous inquiries from railroad officials and other interested persons, and for the purpose of giving administrative construction to certain provisions of the amended act to regulate commerce which became effective on the 28th day of August, 1906, announces the following rulings." The final paragraph and also the final ruling appearing on the sheet reads as follows: "Filing intrastate rates.—All intrastate or other rates which are used in combination with interstate rates for interstate shipments must be posted and filed with the Commission, and
9701 can only be changed, as to such traffic, in accordance with the act." The circular bears the signature of——

Mr. ROSENTHAL. I apprehend Government counsel will not object that it is a circular issued by the Interstate Commerce Commission.

Mr. KELLOGG. Not at all.

Mr. ROSENTHAL. I offer defendants' Exhibit 115 in evidence.

Mr. KELLOGG. It is objected to as irrelevant and immaterial.

Q. Prior to the issuance of that rule by the Commission, what was the general custom with respect to the use of unfiled State rates and the use of a combination of locals in the absence of a published through rate?

Mr. KELLOGG. That is objected to as incompetent and immaterial.

A. The custom was to use them.

Q. That is, a State rate unfiled and unpublished was, according to custom, commonly used?

Mr. KELLOGG. Same objection.

A. That is correct.

Q. Even though the shipment was an interstate shipment?—A. That is true, as I understand the situation.

Q. What was the Boston rate from the Bradford-Titusville field in 1904 and 1905?

9702 Mr. KELLOGG. Do you want him to testify from a tariff?

Mr. ROSENTHAL. No. It has been testified to by Mr. Schindler and I want to get it in here so as to make the connection.

Q. Was it 23½ cents?—A. I understood it was 23½. I would not like to say definitely without the tariff.

Q. Mr. Schindler testified, using Pennsylvania tariff S–458 as the basis of his testimony, that the rate from Bradford, Pennsylvania, to Norwood was 26½ cents, and that that was the rate from April 10, 1904, to January 22, 1907. Have you ascertained whether that rate was changed between those two dates, and, if so, by virtue of what tariff?—A. I find attached to Tariff I. C. C. S–458, Supplement No. 1, which Mr. Schindler apparently overlooked. This supplement was issued by Edward T. Johnson, to whom I have already referred——

Q. Well, it was issued by the Railroad Company?—A. Issued by the Pennsylvania Railroad on April 18, 1905, taking effect April 23, 1905. On the third page of the supplement, as it appears before me, I find a rate of 23½ cents per 100 pounds from Bradford to Norwood.

Q. And to all points on that division in northern New York?—A. To a great many points. It takes in Massena Springs——

Q. Does it take in a great many of the northern New York points on that division?—A. Yes, sir.

9703 Q. So that by virtue of amendment No. 1, effective April 23, 1905, the Boston rate of 23½ cents was applied to that northern New York territory in so far as the towns designated there are concerned?—A. That is correct.

Q. Does it also make a rate from Titusville, Pennsylvania, to the northern New York territory of 23½ cents?—A. Yes, sir; it does.

Q. So that from April 23, 1905, the Boston rate of 23½ cents was the governing rate from Titusville into the northern New York territory?—A. As shown on this supplement, that is correct.

Q. So that if Mr. Westgate testified that the change took place after May, 1906, the date when the Garfield report was issued, he must have been mistaken?—A. Mr. Westgate was mistaken.

Q. On petitioner's Exhibits 612 and 613 A, the same being tariffs of the New York Central road, showing a 9-cent rate from Rochester to Norwood, appear also the words "To Rutland Railroad Points and Beyond." Is that phraseology unusual on tariffs?—A. No, sir; it is not.

Q. Do roads frequently make tariffs, when the traffic is to go beyond their lines to points on other connecting lines, with that phraseology?—A. They do.

Q. What is the explanation of that?—A. The explanation of that is that they are willing to accept a lower proportional rate to such a junction point on traffic going beyond than what they feel

9704 they would be entitled to receive if the shipment was going to that point for local consumption.

Q. That is to say, on a through shipment to points beyond their road, even in the absence of a common arrangement, the railroad companies are in the habit of accepting a lower rate than if the shipment were merely to the terminus of their own road?—A. Yes, sir.

Q. That, I suppose, is true where competitive conditions exist, making it necessary for them to get the traffic in that way?—A. The traffic for beyond?

Q. Yes, sir.—A. That is correct.

Q. I direct your attention again to defendants' Exhibit 112 A, B, and C. Do they illustrate that in any way—the special tariffs issued to the Gulf Refining Company?—A. Defendants' Exhibit 112 A does.

Q. In what way?—A. It names a rate to the Gulf Refining Company as the shipper, from Beverly, Massachusetts, to Northampton and Springfield, Massachusetts, of 12 cents per 100 pounds; and then it provides the following: "On shipments for delivery on the tracks of the N. Y., N. H. & H. R. R. or destined beyond, rate will be 10½ cents per 100 pounds."

Q. That is to say, in the event that the shipment goes only to Springfield proper, the rate is to be 12 cents per 100 pounds?—A. Springfield proper for Boston & Maine delivery, 12 cents.

Q. But in the event that the shipment was to go beyond
9705 Springfield on the N. Y., N. H. and H., the rate was to be 10½ from Beverly to Springfield?—A. That is correct.

Q. So that this tariff is substantially the same as the Rochester and Norwood 9-cent tariff?—A. That is correct.

Q. In so far as its use for shipments going beyond is concerned?—A. That is true.

Q. And in connection with that Gulf Refining Company situation there, any shipment going beyond Springfield as a matter of fact would go into another State, would it not, from Massachusetts?—A. I find that Springfield is the northern terminus of three divisions or branches, of the New Haven road, and I find that the Connecticut State line is only ten miles away, and that the first station named in the Official Railway Guide is Thompsonville, that town being in the State of Connecticut. Therefore this rate sheet would be practically useless on traffic going to points beyond Springfield on the New Haven road, unless they carried the traffic into Connecticut.

Q. So there is an instance of a rate sheet issued to the Gulf Refining Company, which purports to be an intra-state rate, but which was manifestly used, or could be used, and was issued for the purpose of being used in connection with interstate shipments beyond Springfield?—A. That is correct.

Q. And making a lower rate in such event?—A. That is correct.

Q. With a rate of nine cents a barrel on shipments from Olean to Rochester, and nine cents a hundredweight from Rochester to
9706 Norwood, and $23 a car from Norwood to Burlington, the rate per hundredweight on that combination is about 16 cents from Olean to Burlington, is it not?—A. I understand it is; yes, sir.

Q. That is the way it figures out. Is Burlington a water point?—A. Yes, sir; a point of water competition.

Q. In what way?—A. There is a direct water route from New York Harbor to Burlington.

Q. So that the seaboard refineries in New York Harbor can reach Burlington by water route, can they?—A. They can.

Q. Tell us just how.—A. There are regular lines of so-called river boats, practically canal boats, that are towed to some point above Albany.

Q. They go up the Hudson River from New York?—A. They go up the Hudson River and then through the D. and H. Canal and then into Lake Champlain. There is a very large traffic passes every year, north and south bound, through the water route.

Mr. KELLOGG. Of oil, you mean?

WITNESS. Some oil goes every year; yes, sir.

Q. So that there is a direct water route via the Hudson River, the D. and H. Canal, and Lake Champlain, between New York Harbor and Burlington, Vermont?—A. That is correct.

Q. Are freight rates by water, as a general proposition, lower than freight rates by rail?—A. They are.

Q. It is a cheaper form of transportation, is it not?—A. Yes, sir.

Q. Is there any other route from the seaboard refineries in
9707 New York Harbor to Burlington than the one that you have just described which is partially by water and partially by rail?—A. There is.

Q. Describe that, please.—A. By New York Harbor and Long Island Sound to New London, Connecticut; thence Central Vermont Railroad via Essex Junction, just north of Burlington, back into Burlington.

Q. Did you know a 9-cent-per-100 rate from Olean to Rochester that had been filed by either the Erie or Pennsylvania?

Mr. KELLOGG. Filed where?

Mr. ROSENTHAL. Filed with the Interstate Commerce Commission.

Mr. KELLOGG. I object to that. The tariffs are the best evidence of that.

Mr. ROSENTHAL. You have not gotten the question or you would not make that objection.

Mr. KELLOGG. Perhaps I did not understand you.

Mr. ROSENTHAL. I am asking him as to his personal knowledge of it.

WITNESS. What was the question?

(The reporter then read the question as follows: "Q. Did you know of a 9-cent-per-100 rate from Olean to Rochester that had been filed by either the Erie or Pennsylvania?")

Q. Prior to the time that your attention was called to it by Mr. Durand?—A. I do not recall that I ever heard of that rate until someone connected with the Department of Commerce and
9708 Labor brought it up, and I don't remember who that was.

Q. Does it frequently happen, and has that been your experience, that you find different rates between the same points on different roads, or even on the same road?—A. Oh, yes.

Q. That is quite a common experience, isn't it?—A. It is; not an uncommon experience.

Q. And the practice under such circumstances is for the shipper to take the tariff which gives him the lowest rate, isn't it?

Mr. KELLOGG. That is objected to as leading.

A. He would be a remarkable shipper if he did not.

Q. Olean and Rochester are both within the State of New York?—A. Yes, sir.

Q. And such a rate therefore would be purely an intrastate rate?—A. That is correct.

Q. And I understand you have already testified that it was not the habit, prior to the issuance of this rule of the Interstate Commerce Commission, to file those intrastate rates with the Interstate Commerce Commission, even though they were used in connection with interstate shipments?—A. I could not say to what extent it was the rule, but a great many of them were used and not filed.

Q. Do you know of any filed tariff making a rate on oil from Rochester to Norwood prior to 1906?—A. I do not.

Q. So what the Standard Oil Company used in the shipments from Olean to Burlington were the unfiled state rates from
9709 Olean to Rochester of 9 cents per barrel, the unfiled state rate from Rochester to Norwood of 9 cents a hundred (Norwood also being in the State of New York) and the filed interstate rate from Norwood to Burlington of $23 a car?—A. That is correct.

Q. Do you happen to know, Mr. Felton, whether most of the oil that was shipped from Olean to Rochester by the Vacuum Oil Company was oil that went from the Olean refinery to the Rochester refinery for the purpose of further refining?—A. I understand that is correct; yes, sir.

Mr. KELLOGG. Now, wait a minute. Do you know that of your own knowledge, or don't you?

Mr. ROSENTHAL. He has answered that he has understood that is correct.

Mr. KELLOGG. I object to it unless the witness knows of his own knowledge.

WITNESS. I did not personally supervise the shipments, but I got the information.

Mr. KELLOGG. Well, you don't know of your own knowledge, do you, Mr. Felton?

Mr. ROSENTHAL. I suppose a man knows a great many things that he learns in the course of his business.

Mr. KELLOGG. I object to the witness stating from hearsay, and I object to it as immaterial.

Q. So your understanding is that that nine cents a barrel rate between Olean and Rochester was practically an interrefinery rate?—A. That is my understanding.

9710 Mr. KELLOGG. That is objected to as a conclusion of the witness. He does not know anything about it personally.

Q. I show you defendant's Exhibit 116. Please state what that is?—A. Comparative statement of shipments into Vermont territory for the years 1904 and 1905.

Q. Comparative statement of shipments to Burlington, Vermont, is it?—A. Into Vermont territory.

Q. Into Vermont territory, for the years 1904 and 1905?—A. That is correct.

Q. Do you mean by that that that exhibit shows the sources from which the Standard Oil Company shipped its oil into that Vermont territory?—A. I could not say as to the sources of the oil, but it shows the points from which the shipments were made.

Q. That is what I mean.—A. The shipping point.

Q. In the year 1904 how much oil was shipped into Vermont or the Vermont territory via New London?—A. 77 cars.

Q. The numbers on here stand for cars, do they?—A. That is correct.

Q. That is, the Standard Oil companies shipped into the Vermont territory by way of New London in the year 1904 77 cars of oil?—A. Yes, sir.

Q. And by way of Olean how many cars?—A. 161.
Q. And in 1905 by way of New London how many?—A. 82.
Q. And by way of Olean?—A. 175.
Q. By way of Wilson's Point?—A. 31 cars.
Q. And Boston?—A. 5 cars.

9711 Q. So the total oil, stated in percentage, shipped into Vermont territory by way of Olean by the Standard Oil companies, amounted to what?—A. 63 per cent for the two years.

Q. And from the other points?—A. Thirty-seven per cent for the two years.

Q. So that 37 per cent of the oil sold by the Standard Oil companies in the Vermont territory was shipped via points other than Olean during the years 1904 and 1905?—A. Yes, sir.

Mr. ROSENTHAL. I offer in evidence defendant's Exhibit 116.

Q. I show you defendant's Exhibit 117, purporting to be a statement of carload shipments from Olean to Rochester proper and to points beyond, in the years 1903, 1904 and 1905. What do you mean by Rochester proper?—A. It means the cars were unloaded and the traffic taken from the possession of the railroad at that point.

Q. It means, in other words, that was the terminus of the shipment?—A. Yes, sir, of that shipment.

Q. I am seeking to ascertain to what comparative extent that 9 cent per barrel rate between Olean and Rochester was used in connection with northern New York, Vermont, and New England sales. Now will you please tell us how many carloads of oil in the year 1903 that were shipped from Olean went simply to Rochester proper?—A. From this statement, 2,534 cars.

Q. And how many cars went beyond Rochester in the State of New York only?—A. To points in New York State beyond, 1,208.

Q. How many cars in the year 1903 went from Olean via Rochester to New England points?—A. Two hundred and fifty-four.

9712 Q. So that out of a shipment of about 4,000 cars of oil from Olean to Rochester and points beyond, 2,500, in round numbers, stopped at Rochester, 1,200 stopped at other points in New York State, and only 254 went into the New England territory?—A. That is correct.

Q. This same exhibit shows the corresponding figures for the years 1904 and 1905, does it not?—A. Yes, sir.

Q. And then the totals for the three years?—A. Yes, sir.

Q. And then the last column shows the percentage, does it not?—A. That is true.

Q. Showing that of the total Olean-Rochester shipments in those three years 73 per cent were to Rochester proper?—A. That is true.

Q. Twenty-one per cent to New York points beyond Rochester?—A. That is correct.

Q. And only 6 per cent to New England points?—A. Yes, sir.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 117.

9713 Q. The connection between Buffalo and Rochester is by way of the New York Central only, isn't it?—A. The direct line.

Q. Yes; that is the principal direct railroad route?—A. You can go other routes, but that is the direct line.

Q. But from Olean to Rochester the connection is over the Pennsylvania road, is it not, or the route is via the Pennsylvania road?—A. The direct route; yes, sir.

Q. From Olean to Rochester?—A. Yes, sir.

Q. The direct route. Assuming that the Standard Oil Company has a refinery at Olean and one at Buffalo to supply the Rochester and Rochester-beyond territory, the only way that the Pennsylvania could get any benefit from the Standard's oil traffic would be by the shipments emanating from Olean? That is true, is it not?—A. That is true to a very large territory; yes, sir.

Q. And therefore if the Standard could get a lower rate from Buffalo to Rochester than from Olean to Rochester, in attempting to supply that territory, the Pennsylvania might be entirely shut out so far as Olean-Rochester shipments are concerned?—A. If the rate from Buffalo to northern New York points was less than the combination from Olean via Rochester to the same points, Olean, of course, would be out of the market.

Q. Would that account for a fairly low rate, if you please, from Olean to Rochester over the Pennsylvania?—A. Yes, sir; I think it would.

Q. Do you know what the rate was from Buffalo to Norwood by way of Rochester? Was it 12 cents?—A. It was 12 cents a
9714 hundred during quite a period on traffic destined to points beyond.

Mr. KELLOGG. Are you testifying from the tariff?

WITNESS. I am testifying from memory.

Mr. KELLOGG. I object to that. The tariff is the best evidence, unless you refer to the tariff so we can get at it.

Q. You can produce the tariffs later on, I suppose?—A. I am not sure that——

Q. New York Central tariffs.—A. Weren't they produced at Washington?

Mr. MARTYN. I think they are already in the record.

Mr. KELLOGG. We didn't put in any such tariff.

WITNESS. I will produce the tariff to confirm it or withdraw the statement.

Q. The rate from Buffalo to Norwood, you say, during many of the years preceding 1906 was 12 cents?

Mr. KELLOGG. That is objected to as incompetent.

A. Yes, sir; on traffic destined to points beyond—3 cents higher than the rate from Rochester.

Q. I was just going to ask you what the rate was from Rochester to Norwood for points beyond.—A. Nine cents.

Q. The differential between Buffalo and Rochester being 3 cents?—A. Yes, sir.

Q. What was the rate from Olean to Rochester, figured in hundredweight?—A. 2.8 cents per 100 pounds.

Q. So the rate from Olean to Norwood by way of Rochester would be 11.8 cents as compared to the rate from Buffalo via Rochester to Norwood of 12 cents?—A. That is correct.

9715 Mr. KELLOGG. That is objected to on the ground that the tariffs are the best evidence.

WITNESS. I will produce the tariffs, possibly to-morrow, Mr. Kellogg.

Q. And you are of the opinion that you are testifying from tariffs that are already put in evidence by the Government?—A. That is what I have in mind; yes, sir.

Q. So that unless there was a rate of 3 cents or better from Olean to Rochester, on shipments destined to Norwood and beyond, the Pennsylvania Railroad Company as a practical railroad proposition would have been shut out of that traffic?—A. That is true.

Q. I show you a tariff purporting to be issued by the New York Central, making a rate on petroleum and petroleum products in carloads from Buffalo andEast Buffalo to Norwood, New York, of 12 cents per 100 pounds. Did you ever see that before?—A. I have.

Q. Was that one of the tariffs that you had in mind in connection with your testimony of a moment ago when you said that rate was 12 cents?—A. Yes, sir; only I thought it read for points beyond, but this seems to read to Norwood proper, so that it would cover both Norwood proper and beyond.

Mr. KELLOGG. Where did you get this rate order?

WITNESS. That was in my office.

Mr. KELLOGG. Was it ever filed with the Interstate Commerce Commission?

Mr. ROSENTHAL. No; that is an intra-state rate.

WITNESS. I could not say, but I think not.

9716 Mr. KELLOGG. What does this mean: "out 12/31/05?"

WITNESS. I find written across the face of this tariff two memos. One says, "Expired 12/31/05," and the other, in very much heavier pencil, reads, "Out 12/31/05," both having the same signature.

Mr. KELLOGG. I would like to have that marked for identification so I can put it in evidence.

(The paper was marked "Petitioner's Exhibit 928" for identification.)

Q. The United Pipe Line, it appears by the uncontradicted testimony in this case, is a pipe line of a number of so-called independent companies, that terminates at Freemansburg. Freemansburg is 82½ miles from Constable Hook. Do you know what railroad connects the terminus of the pipe line of the United Pipe Line, that being the pipe line of the Pure Oil Company, with Constable Hook, Constable Hook being the water point on New York Harbor?—A. The Central Railroad of New Jersey.

Q. Constable Hook is just below Bayonne, or not very far from Bayonne, isn't it?—A. Right in that vicinity.

Q. And Bayonne is where the largest refinery of the Standard Oil Company is located?—A. There is a very large refinery there.

Q. Now, the distance between Freemansburg, the terminus of the United Pipe Line, owned by the Pure Oil Company, and Constable Hook is 82½ miles, is it not?—A. I understood it was 84.

9717 Q. Well, it is in that immediate neighborhood?—A. Yes, sir; between 80 and 85 miles.

Mr. MORRISON. You call that the United. You mean the United States Pipe Line, don't you?

Mr. ROSENTHAL. No; the United Pipe Line Company, owned by the Pure Oil Company. United States is the full name.

Q. The Central Railroad of New Jersey connects those two points?—A. Yes, sir.

Q. Is there a rate that has been issued by the Central Railroad of New Jersey from Freemansburg to Constable Hook on petroleum?—A. I understand there was such a rate in force from January 6, 1906, until December 31, 1906.

Q. Freemansburg is in Pennsylvania, is it not?—A. Freemansburg is in Pennsylvania.

Q. Constable Hook is in New Jersey?—A. In New Jersey.

Q. I show you defendants' Exhibit 118. What is that?—A. Defendants' Exhibit 118 is a tariff issued by the Central Railroad of New Jersey, or purports to be a tariff issued by the Central Railroad of New Jersey, which came to me through the mail, and was received by my office on February 8, 1906. It bears I. C. C. K 8156. It was issued by the Central Railroad of New Jersey, and reads as follows: "Proportional tariff on refined and crude petroleum when loaded from pipe line into individual tank cars. Carloads, minimum weight full capacity of tank. From Freemansburg, Pa., to Constable Hook,

9718 N. J. Refined petroleum, 10¢ per barrel. Crude petroleum, 9¢ per barrel. Issued January 6, 1906. Taking effect January 9, 1906. Void December 31, 1906."

Q. What is the distance between Olean and Rochester, where the two refineries of the Vacuum Oil Company are located?—A. One hundred and six miles, as I recall it. It is about that distance.

Q. Now, the Standard Oil Company, or the Vacuum Oil Company, was given a rate of 9 cents per barrel on oil between those two points?—A. Yes, sir.

Q. Which is much criticised by the Government as being an exceedingly low rate.—A. So I understand.

Q. The Pure Oil Company is perhaps the largest non-Standard oil company in this country?—A. I understand so.

Q. It seems to have been given an interstate rate, as late as 1906, by the Central Railroad Company of New Jersey, of 9 cents a barrel on crude petroleum and 10 cents a barrel on refined, from Freemansburg to Constable Hook, as shown by that tariff.—A. That is true. And, further, it gave it access to tidewater, with the use of very valuable terminals.

Q. What do you mean by that?—A. I mean that the rate from Olean to Rochester left the oil away up in mid-State somewhere, to which other rates had to be added, but by getting that very low rate of 9 cents and 10 cents a barrel on refined and crude petroleum the parties that you mention——

Q. From Freemansburg to Constable Hook?—A. From Freemansburg to Constable Hook, were saved the very heavy expense of piping not only to the seaboard, but getting valuable facilities for handling the crude and refined in tank cars after they got it there.

Q. In other words, they had their oil at seaboard?—A. Yes, sir.

9719 Q. Which is the desirable point to have your oil? A. That is correct. And with that low rate they had the benefit of all of the Central Railroad of New Jersey's terminals.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 118.

Mr. KELLOGG. This was filed with the Interstate Commerce Commission?

Mr. ROSENTHAL. Oh, it shows on its face. It shows the I. C. C. number.

WITNESS. I understand that it was. It bears the I. C. C. number.

Mr. KELLOGG. And it is marked "To be posted" also, isn't it?

WITNESS. That is the way it reads; yes, sir.

Mr. MARTYN. It is marked "Two copies to be posted," isn't it?

Mr. KELLOGG. Yes; "Two copies to be posted."

Q. You do not know of any other shippers of oil from Freemansburg, Pennsylvania, to Constable Hook excepting the Pure Oil Company, do you?—A. I do not know of anything bearing on that subject except what is contained in that document and what you have said.

Q. The Government offered in evidence Olean tariffs, marked in this case as petitioner's Exhibits 607 and 608. On the tops of those tariffs I find the words "Not to be posted," they being tariffs from Olean to Rochester. Please state, Mr. Felton, whether at that

9720 time, at the time those tariffs were issued and before then and for some time thereafter, it was a common practice to issue interstate tariffs with the phrase "Not to be posted" contained thereon.

Mr. KELLOGG. That is objected to as incompetent and immaterial.

A. It was; and, furthermore, it was simply a designation showing a State from an interstate tariff, that is all.

Q. That is to say, it was not the practice to post such tariffs?—A. As a matter of fact, in a great many cases the State and interstate tariffs were all dumped into the same box.

Q. As a matter of fact, it was not the practice to post any of them?—A. That is correct.

(Papers marked "Defendants' Exhibits 119–A, 119–B, and 119–C.")

(An adjournment was here taken until the morning of Friday, October 2, 1908.)

9721 ROOM 677, FEDERAL BUILDING, CHICAGO, ILL.,
Friday, October 2, 1908.—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison; on behalf of the defendants, Mr. Moritz Rosenthal, Mr. John S. Miller, Mr. Chauncey W. Martyn.

Mr. KELLOGG. Before we start in, I should like to have a list of the defendants' witnesses whom you are going to examine on the railroad question.

Mr. ROSENTHAL. I will have it made up for you.

Mr. KELLOGG. I would like to get it to-night.

Mr. ROSENTHAL. Just as soon as we can get it for you.

Mr. KELLOGG. I ought to have had it before we came here, under our understanding. I would like to have it entered of record that I demand a list of the witnesses under our understanding. I have not been furnished it.

Mr. ROSENTHAL. What understanding?

Mr. KELLOGG. That we should have a list of the witnesses before we start in to take the testimony.

Mr. ROSENTHAL. A list of what witnesses—of all the railroad witnesses?

Mr. KELLOGG. Certainly.

Mr. ROSENTHAL. Before we start in to take any of the railroad testimony?

9722 Mr. KELLOGG. Certainly.

Mr. ROSENTHAL. I deny any such understanding.

Mr. KELLOGG. Well, you refuse to give it, do you?

Mr. ROSENTHAL. No. On the contrary, I say that we will furnish you with the list, just as soon as we have them.

Mr. KELLOGG. You have been furnished our list of witnesses before we started in on any subject.

Mr. ROSENTHAL. Why, we were furnished your list of witnesses toward the end of your case, and in many instances from day to day; in very few instances more than a few days before the witnesses were called.

Mr. KELLOGG. I absolutely deny that that is the fact.

Mr. ROSENTHAL. Well, evidently we are not going to get together on our facts.

Mr. KELLOGG. You refuse to furnish them, do you?

Mr. ROSENTHAL. No, no. You can not put me in that position. Quite the contrary. I told you across the table we would give you all that we had, and we will give you the others just as soon as we get them. Mr. Felton will be upon the stand, probably, at least two weeks.

Mr. KELLOGG. That does not make the slightest difference with the question. We have not had the name of a single witness on the railroad question except Mr. Felton. We asked for it in New York

before we left there, and were informed that Mr. Felton would be practically the only witness, and now we understand there are thirty or forty more.

Mr. ROSENTHAL. You were told that he would be the most important witness and the longest witness, and would take up
9723 practically the entire time, which is the fact.

Mr. KELLOGG. I leave it to the examiner as to what you said on that subject.

HENRY E. FELTON, recalled, and his direct examination resumed, as follows:

By Mr. ROSENTHAL:

Q. Mr. Felton, have you in your possession a list of tariffs issued by any railroad companies, other than oil tariffs, that contain the phrase "Not to be posted?"—A. I have.

Q. I show you defendants' Exhibits 119 A, B, and C. What are they?—A. 119–A is a tariff of commodity rates, applying from Philadelphia to points named within the tariff, issued by the Pennsylvania Railroad, on No. L. R. O. G., No. 727.

Mr. KELLOGG. One moment. I enter an objection against the introduction of any tariffs, except on petroleum or products thereof; and this may apply to all the questions.

Mr. ROSENTHAL. Of course.

WITNESS. Directly over the words "Pennsylvania Railroad" are the words underscored "Not to be posted."

Q. That is a tariff issued by the Pennsylvania Railroad Company, covering, generally speaking, what class of commodities?—A. The tariff covers a very wide range of commodities. There are fourteen pages, naming rates on brewers' grains, dressed beef, rope, paper stock, hides, glass, pig iron, fire brick, nitrate of soda——

Q. And so on?—A. And a great many other articles.

Q. Now, have you any other tariffs?—A. Before leaving
9724 this tariff I would like to call attention to the fact that provisions are made in this tariff specifically for the application of its rates on traffic coming from other States than Pennsylvania—a tariff made and issued by the Pennsylvania Road for the express purpose——

Mr. KELLOGG. I object to that.

WITNESS. In many cases——

Mr. KELLOGG. One moment, until I enter my objection.

Mr. ROSENTHAL. Let him enter his objection, and then go ahead.

Mr. KELLOGG. I object to your stating what the tariff was made for. The tariff is the best evidence of what it was made for, and your conclusions are immaterial.

Q. Go ahead.—A. For the express purpose of applying on interstate business.

Q. Is that stated on the face of the tariff?—A. That is stated on the face of the tariff.

Q. On what page of the tariff?—A. On the first page.

Q. Read what it says there, please.—A. It provides for certain rules and rate application on shipments other than iron ore, beauxite ore, etc., reaching Philadelphia by vessel from foreign or domestic ports. That is one thing.

Q. Anything else on that tariff that you wish to call particular attention to?—A. On the second page of the tariff is a rate provision applying on pig iron, carloads, coming from the South via rail or water lines, unprotected by through rate.

9725 Q. Now, have you any other tariffs?—A. Before leaving this tariff, I would like to call attention to the fact that directly after the Hepburn bill was passed or became effective the Pennsylvania Railroad issued a supplement or a qualifying circular to that tariff, changing it from a local rate order series to an I. C. C. series, which local order provided that, effective February 13, 1905, this local rate order tariff No. 727 would be thereafter known as I. C. C. tariff G No. 2778.

Mr. MILLER. Does that have any notation about posting?

WITNESS. May I have that supplement again for a moment?

Mr. KELLOGG. Yes [handing paper to witness].

WITNESS. The qualifying circular or supplement, or whatever it is, issued on February 13, 1905, provided the following: "To be posted in each freight station as required by law."

Q. Is there any rate named in that tariff on petroleum? Will you refer to page 14, please?—A. Yes, sir.

Q. What is that?—A. It names rates on petroleum and its products, viz, refined oil, naphtha, benzine, lubricating oil, and residuum, paraffine and paraffine wax, to quite a number of stations in Pennsylvania—rates on oil in carloads.

Q. That is the State tariff?—A. That is the State tariff; yes, sir.

Q. Exhibit what?—A. Defendant's Exhibit 119–A.

Q. Now, on page 15 of the tariff is there anything said about import ore—any rate named on import ore?—A. On page 15 will

9726 be found rates on import chrome ore and on import ore, iron, or manganese.

Q. Showing that that tariff was used in conjunction with products brought from without the State of Pennsylvania?—A. That is correct.

Mr. KELLOGG. I object to the witness stating things that are not on the tariff, and drawing conclusions from them. The tariffs are the best evidence. I do not want to take the time to repeat this objection to every question; but every tariff he takes up, he states his conclusions about it; and if I am compelled to object to each question, it takes time. If the counsel will stipulate that the objection may refer to all his conclusions from tariffs, I will not keep repeating it.

Mr. ROSENTHAL. Certainly.

(Paper marked "Defendants' Exhibit 119–D.")

Q. Have you any other tariffs of a similar nature?—A. Defendants' Exhibit 119–B purports to be tariff 4001, issued by the Lehigh Valley

Railroad Company. It bears in plain type the words "Not to be posted." It names rates on scrap iron and other material between quite a number of points in the State of Pennsylvania.

Q. It is a State tariff, is it?—A. A State tariff; yes, sir.

Q. Any others?—A. Exhibit 119-C is a tariff issued by the Erie Railroad Company; joint through freight tariff No. E. R. 2787. It bears the words "Not to be posted" underscored with a heavy line. It is a joint freight tariff on lumber, carloads, between points on the Erie Railroad and the Wilkesbarre & Eastern Railroad in Pennsylvania.

Q. A State tariff?—A. A State tariff.

9727 Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 119, A, B, C, and D.

Mr. KELLOGG. Objected to as incompetent, irrelevant, and immaterial.

Q. Mr. Schindler testified with respect to Rutland Railroad local tariff I. C. C. 421, effective December 20, 1900, which made rates over the Rutland Railroad by exceptions to official classification of November 5, 1903. Have you examined that tariff?—A. I have, slightly.

Q. That is a class tariff that makes a rate from Norwood to Burlington, does it not?—A. I understand that is so, but I would like to have the tariff. I do not recall them by numbers.

Mr. ROSENTHAL. Have you got it here, Mr. Durand?

Mr. DURAND. Mr. Crossland has it.

Mr. ROSENTHAL. Rutland Railroad I. C. C. 421, Mr. Crossland. We will pass that a minute until we see whether he has it. Here is a copy of it [handing witness paper]. Mr. Schindler, as I understand, testified with that tariff as a basis.

Mr. KELLOGG. Which one are you referring to?

Mr. ROSENTHAL. I. C. C. 421. We have just found it.

Q. Mr. Schindler, as I understand, testified with that tariff as a basis, to the third-class rate from Norwood to Burlington. Do you find that rate named in that tariff—a third-class rate from Norwood to Burlington?—A. I do.

Q. Is any oil produced at Norwood?—A. I never heard of any.

Q. Is there any refinery there?—A. No, sir.

Q. Are any shipments of oil made from there that you know of, originating there, I mean?—A. Nothing originating there

9728 that I could possibly conceive of.

Q. So the discovery by Mr. Schindler of a third-class rate in the tariff that you have before you, as a practical railroad proposition could not have the slightest significance, could it?—A. I should say not.

Q. It never could or would be used?—A. In my judgment that is correct.

Mr. KELLOGG. May I ask one question about that tariff, so I will not have to go back to it?

Mr. ROSENTHAL. Yes.

By Mr. KELLOGG:

Q. That would apply on oil shipped into Norwood, wouldn't it, just the same as oil produced at Norwood?—A. Shipped into Norwood from some other point?

Q. Yes.—A. That rate could be used on a shipment from Norwood; yes, sir.

Q. So it would not make any difference whether the oil was produced in Norwood or not? If it was shipped in there, it could be shipped to Burlington on that tariff, couldn't it?—A. It could be.

By Mr. ROSENTHAL:

Q. It would not be shipped from Norwood to Burlington in the presence of a filed commodity tariff, would it?—A. No, sir.

Q. That is, the filed commodity tariff would take precedence over the class rate?—A. Over the class rate.

Q. Mr. Schindler also testified to the average weight of tank cars shipped by the Standard from Olean to Norwood. Have
9729 you caused to be made certain tables showing the actual fact in that regard?—A. I have.

Q. I show you defendants' Exhibit 120. What is that?—A. Defendants' Exhibit 120 is a statement headed "Computation of per cwt. cost of transportation on shipments from Olean to Vermont points." This statement was prepared from Union Tank Line records, under my instructions, showing the cars and the average weight for the years 1900, 1901, 1902, 1903, and 1904. It shows the average weight of all shipments made from Olean to Burlington to have been——

Q. That is, the average weight of the cars actually shipped?—A. Actually shipped, for those five years, to have been 57,004 pounds.

Q. Instead of 65,000 pounds, as was testified to by Mr. Schindler?—A. That is correct.

Q. Under paragraph 2 of defendants' Exhibit 120, what do you show?—A. The per cwt. equivalent of the carload rate from Norwood to these three Vermont points at an average carload weight of 57,004 pounds. The three Vermont points are Burlington, Bellows Falls, and Rutland.

Q. And with the average car weight of 57,004 pounds you have, applying the $23 per carload rate to Burlington, $28 to Bellows Falls, and $30 to Rutland, determined what the cwt. rate is?—A. A rate of 4 cents per 100 pounds to Burlington, 4.9 cents to Bellows Falls, and 5.2 cents per 100 pounds to Rutland, Vermont.

Q. And what is paragraph 3 of defendants' Exhibit 120?—A. Paragraph 3 is a statement showing sum of local rates in
9730 cents per cwt. Olean to Burlington for years 1900 to 1905.

Q. And in determining that you take the rate from Olean to Rochester, viz, 2.8 cents per 100 pounds; from Rochester to Norwood, 9 cents per 100 pounds, and then add to that the rate from Norwood to Burlington, Bellows Falls, and Rutland, respectively,

per 100 pounds, as shown in paragraph 2 of that exhibit?—A. That is correct.

Q. Getting in your last column, then, the total rate from Olean to Burlington, Bellows Falls, and Rutland?—A. As follows—do you want those rates?

Q. Well, they are shown on the exhibit.—A. Yes, sir.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 120.

Mr. KELLOGG. Now, one moment. These are taken from the records of the Union Tank Line?

Mr. ROSENTHAL. The weights.

WITNESS. The weights, yes, sir.

By Mr. KELLOGG:

Q. Of actual shipments?—A. Yes, sir, the capacity of the cars that were used in that trade during those years.

Q. And the totals of the first statement are the totals for the five years? That is, the average in the first statement is the average for the five years—average weight?—A. Here is the year [pointing to the paper], the number of cars, the actual weight of those cars, the average weight, and that is the result.

Q. For the five years it is 57,004 pounds per car?—A. Yes, sir, that is correct.

9731 Q. But for 1903 it is 71,100 pounds, isn't it?

Mr. ROSENTHAL. That is shown on the statement.

Q. Is that correct?—A. That is correct; yes, sir.

Q. And for 1904 it is 64,319 pounds. Is that right?—A. That is correct.

Q. What did you mean by saying that Mr. Schindler testified that the average was 65,000 pounds, and it was 57,000 pounds?—A. I did not say so.

Q. Your counsel said so, and you assented to it.

Mr. ROSENTHAL. Now, just a minute.

Q. Whom were you trying to mislead?

Mr. ROSENTHAL. Now, wait just a minute.

Q. There is Mr. Schindler's testimony [handing witness printed volume of testimony].—A. I have not read Mr. Schindler's testimony.

Mr. ROSENTHAL. I am going to object to cross-examination on anything excepting the sources from which he got the material.

A. While you were reading this, why didn't you read 1901, which is 48,623 pounds?

Mr. ROSENTHAL. To make up this exhibit; because he does not want to read anything that tends to show anything we want to show. That is the reason.

Mr. KELLOGG. Wait a minute. The counsel asked you if it was 57,000 pounds average instead of 65,000 pounds as Mr. Schindler testified, and you said yes, didn't you?

Mr. ROSENTHAL. Now, Mr. Felton, just a minute. I shall have to instruct you not to answer that question at this time, in order to raise the issue now.

9732 Q. Do you refuse to answer the question?—A. On the advice of my counsel, I do.

Mr. ROSENTHAL. I have no objection to the question being asked when it comes your turn to cross-examine, but I am going to object to a general cross-examination at this point. I have no objection to your cross-examining concerning the source of his information with respect to any exhibit which we put in, at the time we put them in, as I have already stated.

Mr. KELLOGG. Now, may it please the examiner, when we took this railroad testimony we had an understanding that we were to take the seperate subjects as we go along, and as the separate subjects were put in, to cross-examine as to those subjects. Mr. Rosenthal was given that privilege, and in all of the Government's testimony each separate subject was taken, and he cross-examined as he went along.

Mr. ROSENTHAL. That is not the fact. The record will not bear you out on that.

Mr. KELLOGG. For instance, take the Evansville situation. After Mr. Durand had testified to that, Mr. Rosenthal cross-examined him. As to the Alton and the others, the same, and as to Olean the same. In fact, no objection was made to his cross-examination at any time, and as tariffs were offered he asked such questions as to those tariffs and other documents as he saw fit, at the time, so as to clear the matter up, as we went along. Now, we claim the same right in all fairness that was accorded to Mr. Rosenthal and agreed to; that is all. We ask the examiner to accord us that right.

9733 Mr. ROSENTHAL. As I have already stated, whenever we offer any exhibit, I have no objection to counsel cross-examining the witness concerning the sources of his information in connection with the data embodied in that exhibit, for the purpose of giving him material upon which he may predicate an objection to the exhibit, if he sees fit to make such an objection. I do most strenuously object, however, to cross-examinations by piecemeal, for a good many reasons.

In the first place, counsel has not accurately stated the situation as it existed during the time that he was putting in the railroad testimony, and I need only call to your attention the controversy that arose in Washington between Mr. Kellogg and myself after Mr. Durand concluded his testimony, when I asked for time to determine whether or not I should cross-examine him at all; showing clearly that I had not attempted to cross-examine him as we went along, although I had asked him certain questions from time to time with respect to certain exhibits. But whether I understate that or whether Mr. Kellogg now overstates it is not of any consequence, and should not change the orderly rules of procedure. The situation last winter was entirely different than the situation is now. Counsel within the past few days has seen fit to move for a rule upon us, to close our proofs not later than December first. That limits our time within which we may put in our case. It takes much longer to cross-examine by piecemeal than it does to cross-examine when the witness is turned over.

It takes longer because in the first place the cross-examinations of necessity become repetitious before you get through, because the
9734 cross-examiner of necessity goes from one field into another field that we either have theretofore touched upon or that we are to touch upon and reach as the examination progresses, and he is constantly anticipating, as was illustrated yesterday, something that before I get through with the witness I shall fully cover. You can not cross-examine successfully in that way without taking a great deal more time than you otherwise would take; and these different railroad situations, as we develop them by this witness, run into each other. As we are going to present our case you can not segregate one situation from another, whether the Government saw fit to do that, or did do that, or not. We have not seen fit to do that, and we do not do that, and our different railroad situations run one into the other. Therefore it will be impossible for us to turn the witness over to counsel for the Government upon the theory that we are through with any particular subject-matter; because we are not through with it until we get entirely through with the witness, and we will be constantly coming back to it and will be constantly connecting the one situation with the other situation. So for that reason, and because such a cross-examination as Mr. Kellogg seems to have in mind and would like to make will take a great deal more time, we object to it; and there is no power in the examiner, if you please, to permit such a cross-examination until we turn the witness over for cross-examination. He is our witness. We have him upon the direct. He is not the witness of the Government for cross-examination until we turn him over, and you can not take him away from us, and I do not know of any power lodged in the examiner to permit that, even if it were desired.

9735 But aside from that question, simply for the purpose of saving time here and getting through with this witness upon the direct examination, we insist upon concluding the direct before any cross-examination is permitted beyond what I have indicated.

Now, there is another reason that is a practical reason. It has been decided as between counsel that I should take Mr. Felton upon the direct examination. I apprehend his direct examination may last a week or ten days, possibly two weeks. If we are to get through with our case by December first, it will then become necessary for me to leave here about that time, whether in two weeks or whether in three weeks; I shall have to leave here in all probability before the railroad end of the case is concluded, leaving Mr. Miller to conclude that branch of the case, in order to go to New York and prepare and get ready for the balance of the case that is to go in, if we are to get through by December first. Now, if Mr. Kellogg is to be permitted to interject his cross-examinations ad infinitum here on all sorts of things beyond the line that I have indicated, I will be kept here up to the last minute, and will be utterly unable to get ready to go ahead in New York when we contemplate now going ahead.

Mr. KELLOGG. I did not overstate—I understated, if anything—what the counsel did and what the understanding was. When we got through, or practically through with the Evansville situation, Mr. Rosenthal cross-examined Mr. Durand; as to each one of the groups of rates he cross-examined him in the same way. In addition
9736 to that, whenever a tariff was offered, he asked any question he saw fit, and whenever he asked that any other part of a tariff be put in, we put it in. We accorded him full opportunity to cross-examine. The only thing we did insist on, when Mr. Durand was through and left the stand, was that counsel should not take a week or ten days, or whatever the time was, to determine whether they wanted to cross-examine further, because we wanted to go on with other matters. We have accorded to Mr. Rosenthal every opportunity to clear up each situation as we went along. Now all we ask is the same treatment that we accorded him, and which he agreed to, and he does not deny that he agreed to it.

Mr. ROSENTHAL. Oh, yes, I do. Didn't I cross-examine Schindler when he got all through, and was there any cross-examination beyond that?

Mr. KELLOGG. I am not sure as to Schindler; but certainly in the case of Durand—

Mr. ROSENTHAL. Except an occasional question as we went along.

Mr. KELLOGG. There certainly was as to Mr. Durand.

Mr. ROSENTHAL. You will find practically no cross-examination of Mr. Durand anywhere in his testimony.

Mr. KELLOGG. Pages of it.

Mr. ROSENTHAL. Practically none except with respect to the C. and E. I. rates.

Mr. KELLOGG. You do not deny you had full opportunity given you?

Mr. ROSENTHAL. No, I do not deny it.

Mr. KELLOGG. Certainly you don't.

9737 Mr. ROSENTHAL. Certainly not. That is not the question.

Mr. KELLOGG. Now, wait until I get through.

Mr. ROSENTHAL. The question is, What was done?

Mr. KELLOGG. Counsel was given that full opportunity and it was done, and the examiner will remember it. We claim the same right when Mr. Felton has substantially completed his testimony about the eastern situation—he may make it as long as he pleases; that is not what we object to—then we want to cross-examine him on it.

Mr. ROSENTHAL. The trouble about that is, the eastern situation runs right into the Ohio situation.

Mr. KELLOGG. Wait a minute. Oh, no. When Mr. Rosenthal has completed a situation like the Olean situation we claim the right to examine him. Because Mr. Durand testified to a certain tariff that applied to the C. and E. I. and also to the Alton and the two ran together, that fact was not used as a reason why Mr. Rosenthal should not cross-examine Mr. Durand as to the Evansville situation. Not at all. He was unlimited as to what he should do. As your Honor remembers, when tariffs were offered he asked as many ques-

tions as he saw fit, and he chose the nature of the questions. We did not dictate. Now, the reason why he does not want Mr. Felton cross-examined is perfectly evident from the way he was testifying as to that particular document which he has just offered. Mr. Felton knew, if he knew anything about Mr. Schindler's testimony, that he only testified as to 23 cars during the years 1903 and 1904, and that they averaged 65,000 pounds to a car. Mr. Rosenthal asked
9738 him if these averaged 57,000 instead of 65,000 pounds, as Mr. Schindler testified, leaving it to appear on the record that Mr. Schindler had lied about it, while as a matter of fact he had not testified to anything of the kind.

Mr. ROSENTHAL. No; but he drew an incorrect inference.

Mr. KELLOGG. He did not draw any incorrect inference.

Mr. ROSENTHAL. Now, that is where we differ.

Mr. KELLOGG. And this statement shows that the average of the cars for 1903 was 71,100 pounds, and for 1904, 64,319 pounds; more for those two years than Mr. Schindler testified to. It is just in a line with the insinuations that this witness is trying to get into this record, and which the counsel wants to prevent us calling attention to as the documents are offered. That is all there is of it.

WITNESS. But the document is so honestly made that it shows the figures.

The EXAMINER. You are not to take part in this argument.

Mr. ROSENTHAL. The document shows on its face just what it shows. It covers the years 1900 to 1905.

Mr. MILLER. I submit that the witness has an equal right to come back at the counsel as the counsel has to attack the witness.

The EXAMINER. I do not think in that way exactly.

Mr. MILLER. I beg pardon——

Mr. ROSENTHAL. I do not think counsel has any right, in order to fortify his argument, to say that the witness is insinuating that which is not true. The witness happens to be under oath. The coun-
9739 sel stands here not under oath, and the witness can only protect himself by saying under oath that which he should be given a right to say.

The EXAMINER. As far as that is concerned——

Mr. ROSENTHAL. The counsel's tongue sometimes runs away with his discretion and with his judgment.

The EXAMINER. That is true in principle. I am objecting to the interruption while counsel are conducting this argument. If the witness desires to say anything, he certainly will be accorded the privilege, but I think his counsel is quite able to protect him.

I do not think there is any use of discussing this matter any further. My recollection is that in Washington the privilege or right was accorded to the defendant to cross-examine from time to time as we went along from one subject to another. I am not aware that there was any general stipulation entered into that that should be the case throughout. Whether it was or not, that took place. I do not know that that has any particular bearing upon this immediate

question. The examiner is asked, as I understand it, to make a rule here. Now, I think that for some reasons the record would be more intelligible to the court if the testimony on each subject could be kept together. The situation is a little bit unusual. No lawyer would say, for instance, that the plaintiff should put in a dozen witnesses and that there should be no cross-examination until they had all testified. Each witness is cross-examined at the close of his direct examination. Here one witness is carried over a great deal of ground, covering different subjects, which makes the situation somewhat
9740 analogous to the testimony of several witnesses, and the record would be a little better if each subject could be closed as we go along. If that were feasible, if I felt that it was within my province to make any rule, I should certainly favor that course so far as it is practicable, considering the nature of the testimony.

Mr. ROSENTHAL. I think that is open to discussion, Judge, but then——

The EXAMINER. But counsel understand perfectly the limitations of my power here. In the absence of any rule or any authority that I have, as controlling the power of the examiner, I think my duty is, so far as I can, to see that the examination is conducted according to the well-recognized rules of evidence. It certainly is the general rule that a witness is the witness of the party who calls him until the examination is concluded, except that the court permits, as a matter of course, interruptions from the other side in order to lay the foundation for objections, and it is within the discretion of the court, probably, to permit cross-examination to be interjected. Now, if I should make such a rule as is asked for by the Government, the only way to test my power, I take it, would be for the witness, under advice of counsel, to refuse to answer the question on such attempted cross-examination. That would go to the court, and the court might rule that that is a proper thing to do; but that would be within the discretion of the court. I do not apprehend that the examiner has that discretionary power—to change the rule of evidence and permit the other side to take the witness away for the purpose of general cross-examination—even though it is limited to one subject.
9741 So I do not feel that I have any power to make a rule on that subject. I think it is proper for me to say, as far as my judgment is concerned, that in so far as possible the evidence should be kept together on any one general subject.

Mr. ROSENTHAL. We entirely agree with that.

The EXAMINER. It will facilitate the examination of the record and the abstracting of the record.

Mr. ROSENTHAL. We entirely agree with that; but in view of the limitation of time here which has been imposed we must have that before us all the time, and we think that the other method will materially shorten the taking of this testimony and will not abridge the right of the Government in the slightest degree to develop anything that they regard as of any importance on cross-examination.

Mr. MILLER. The Government have the evidence all written out before them.

Mr. ROSENTHAL. They have daily copies, and these papers are going in by way of exhibits.

Mr. KELLOGG. Why don't you go ahead with your testimony?

Mr. ROSENTHAL. Simply because the examiner and I are exchanging views here, which I assume we have the right to do, even if you are counsel for the Government.

By Mr. ROSENTHAL:

Q. Testifying at Washington, Mr. Schindler, with the Red Line Fast Freight Book No. 42 as the basis for his testimony in that regard, testified generally that the New England roads prorated on all commodities other than oil, but did not prorate on oil. Have you examined Red Line Fast Freight Book No. 42 in the light of that
9742 testimony of Mr. Schindler, or in connection with that testimony of Mr. Schindler?—A. I have, but I should like the book.

Q. What have you found with respect to that situation?—A. Have you got the book?

(Red Line Fast Freight Book handed to witness.)

A. (Continuing.) After Mr. Schindler's introduction of the Red Line Book into the case I very naturally looked it over, and I find that while the Red Line Book No. 42 does contain certain restrictions in regard to the application of Boston rates to shipments of petroleum going into New England, it does not provide for a general prorate to all of the New England points named in the book on other classes of traffic.

Mr. KELLOGG. I object to Mr. Felton testifying to what the tariff shows. The tariff is the best evidence. If he will follow the course Mr. Schindler did, and simply read the extracts, I will not object to it, as I want to facilitate the examination; but this generally testifying that tariffs show things and do not show things, wihout pointing out——

Mr. ROSENTHAL. Give him a chance and he will point them out. That is what he is going to do.

Mr. KELLOGG. In what respect, is objected to.

Q. Go right ahead now. We will get to the details in a minute. I show you defendants' Exhibit 121. Please state first generally what defendants' Exhibit 121 is.—A. List of places in New England to which prorating arrangements prevailed and memoranda of limitations thereon. I might add that that was taken from 42 Red Line.

Q. I was just about to ask you that. Was that taken from——
9743 Mr. KELLOGG. What exhibit is that?

Mr. ROSENTHAL. Defendants' Exhibit 121.

Q. Was that exhibit made up from the Red Line Fast Freight Book No. 42, the book upon which Mr. Schindler based his testimony in that connection?—A. It was made up from Red Line Handbook 42, yes, sir.

Q. Now turning to Exhibit 121, you show there a great many stations, running up to 600 odd, do you not?—A. The total number of stations is 646, as shown by the statement.

Q. And those stations are stations taken from this Red Line tariff, located in Maine, Vermont, and New Hampshire?—A. Those three States.

Q. You have on the left-hand margin of Exhibit 121 certain figures under the title of "Reference Number"?—A. Yes, sir.

Q. Please explain that.—A. The numbers under the heading "Ref. No." are taken from reference numbers given on pages 55 to 68, inclusive, of the Red Line book referred to.

Q. And under the head of "Remarks" appear certain notes, such as "Note 66." What does that refer to?—A. They are practically reference numbers also.

Q. Taken from the Red Line tariff?—A. From the same pages, yes, sir.

Q. Going back again to your column "Ref. No.," the very first figures thereunder are "3–59." What does that mean?

Mr. KELLOGG. I would again like to ask for copies of these exhibits, as we furnished you ours.

Q. What does that mean?—A. I am reading from page 55 of the Red Line Book 42. Opposite reference No. 3 I find the
9744 following: "For stations marked thus"——

The EXAMINER. Mr. Rosenthal, did you observe the remark of Mr. Kellogg? I think it is entitled to a reply.

Mr. ROSENTHAL. Yes, I observed it. I told him to take the originals. Our copies are bound up.

Mr. KELLOGG. The originals are being used. I can not use the originals.

WITNESS. Reference No. 3 (I am reading from the book) states, "For stations marked thus"——

Q. No, no, you do not understand my question.—A. I beg your pardon, sir.

Q. I wish you to explain generally what the number "3–59" means.—A. The figures "3–59" refer to certain rules.

Q. The numbers under the head "Ref. No." then refer to certain rules; and where you have, as, for example, Agamenticus, Maine, 3–59, that means that in determining what the rate is to Agamenticus you must also refer to rules, No. 3, and rules, No. 59?—A. That is correct.

Q. As set out in the Red Line tariff?—A. That is correct.

Q. That is to say, these rules are found in that tariff?—A. Yes, sir.

Q. Now, opposite Alburgh, Vermont, for example, the second town named on this exhibit, I find under the head of "Remarks," "Note 66." What does note 66 refer to? Does it refer to something within the Red Line tariff No. 42?—A. It does.

Q. And is it in that tariff entitled "Note 66"? Is there such a note there?—A. There is. In the list of explanation

9745 of reference numbers, as given in the body of the tariff, I find on page 65 No. 66. It does not bear the prefix "Note," but the numeral 66.

Q. But your note 66, that is found in this exhibit under the head of "Remarks," then refers to No. 66 as found in the Red Line tariff 42?—A. That is correct.

Q. On what particular page of Red Line No. 42 is 66 found?—A. On page 65.

Q. On page 65 of Red Line tariff 42. Now, do I understand that subject to whatever qualifications may be stated in the rules found under the head of "Reference numbers," and subject to whatever qualification may be found in note 66 indicated under the head of "Remarks," all of the towns set out in this exhibit were subject to a prorating arrangement?

Mr. KELLOGG. That is objected to as incompetent and a conclusion of the witness. The tariff is the best evidence.

Mr. ROSENTHAL. I know, but you gentlemen did not put the tariff in.

Mr. KELLOGG. Wait a moment——

Mr. ROSENTHAL. I beg your pardon.

Mr. KELLOGG. I would like to know what you refer to as prorating. Prorating on what?

Mr. ROSENTHAL. On commodities other than oil.

Mr. KELLOGG. All right.

WITNESS. Unless the Red Line Billing Book 42 otherwise provides, I would have to—there are a great many points here——

Mr. ROSENTHAL. Now read my question to Mr. Felton, please.

9746 The reporter read the question, as follows: "Now, do I understand that subject to whatever qualifications may be stated in the rules found under the head of reference numbers, and subject to whatever qualification may be found in note 66 indicated under the head of "Remarks," all of the towns set out in this exhibit were subject to a prorating arrangement on commodities other than oil?"—A. I so understand.

Q. And you so interpret that tariff?—A. I do.

Q. Is it true, then, that the New England roads refused to prorate on oil, but did prorate on all other commodities?—A. You mean at the Boston rate?

Q. Yes, sir.—A. That is not altogether true, as I can determine it from this Red Line Billing Book.

Mr. KELLOGG. That is objected to on the same ground, that the tariff is the best evidence, and that the witness is not pretending to state the tariff or the substance of it, but is drawing his conclusions.

Mr. ROSENTHAL. I do not want to offer the whole of Red Line tariff 42 in evidence——

Mr. KELLOGG. Oh, I do not want it, but if he will point out——

Mr. ROSENTHAL. Because Mr. Schindler testified to it without offering it; for the same reason we do not want to encumber the record.

Mr. KELLOGG. I am not going to ask you to do that at all. I just want him to be as reasonably specific as possible.

9747 Mr. ROSENTHAL. I have no objection to this, that if that tariff should be desired in the course of the argument it may be used by you or may be used by us, whether it is in or whether it is not in.

Mr. KELLOGG. There is no objection to that. As far as we are concerned, we consent to that.

Mr. ROSENTHAL. But I think when I get the whole of the exhibit in you will see that I have specifically referred to everything in that tariff that we use.

Q. What is defendants' Exhibit 121-A?—A. Defendants' Exhibit 121-A is a statement of restrictions enumerated by the Red Line Eastbound Fast Freight Billing Book in the application of Boston rates to points named in Maine, New Hampshire, and Vermont.

Q. What relation has it to Exhibit 121?—A. They must be used together.

Q. That is to say, you set out verbatim in defendants' Exhibit 121-A the various rules that you refer to in 121 under the head of "Reference numbers?"—A. That is correct.

Q. And from what were those rules taken?—A. Those rules were taken from the rules shown in the Red Line Billing Book under discussion.

Mr. MARTYN. No. 42.

Q. Do you also set out the note 66——A. I do.

Q. In Exhibit 121-A?—A. Yes, sir.

Q. And was that taken from the Red Line Book verbatim?—A. It was.

9748 Q. So that defendants' Exhibit 121 contains all of the rules and all of the notes that in any wise tend to qualify the rates to the particular towns that are designated in 121?—A. You mean 121-A? 121-A contains the rules; yes, sir.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 121 and defendants' Exhibit 121-A.

Mr. KELLOGG. Let me see if I understand you, Mr. Felton; 121 is the list of towns to which the New England roads prorate with the western roads, or roads west of New England?—A. As shown in this book; yes, sir.

Mr. KELLOGG. And 121-A is the rules and limitations indicated in 121 by the number "Note 66" or reference numbers, is it?

A. Yes, sir.

Mr. KELLOGG. And the commodities which these prorating arrangements refer to were other than petroleum?

A. Some of those applied to petroleum and other articles. You will see reference "5" in some places.

Mr. KELLOGG. That is what I do not understand. What did you mean in your answer to Mr. Rosenthal by "other than petroleum?" That these rates apply to other than petroleum?

A. In some cases they apply to petroleum and other things, and in some cases they do not apply to petroleum by the elimination of rule 5.

Mr. KELLOGG. Except where No. 5 appears opposite the town there is no prorating on oil?

A. That is right.

Mr. KELLOGG. I understand it.

9749 Q. As I understand Mr. Felton, you have selected from Red Line Tariff No. 42 all of the New England towns that you were able to find in that tariff, and have excluded from this exhibit towns other than New England towns?—A. I have excluded all towns other than those in Vermont, New Hampshire, and Maine.

Q. But all of the towns that you have named are towns that are found in Red Line eastbound billing instructions No. 42?—A. That is correct.

Q. And the references are just as given in that tariff?—A. The statement was very carefully compiled under my instructions. I did not do the work myself.

Q. Have you examined the table set out on page 143 of the petition filed in this case?—A. I have.

Q. That table generally purports to show the alleged secret rate obtained by the Standard Oil Company between Burlington and the points named and the second-class rate, which presumably was paid by companies other than the Standard Oil Company, does it not?—A. That is correct.

Q. Have you analyzed that statement?—A. I have looked it over quite carefully.

Q. Have you any tariff which made a rate from Bradford, Pennsylvania, to points on the Central Vermont and Rutland road during the period of time from 1897, say, on to 1906 or 1907?—A. There was such a tariff. I do not recall the particular year as you set it forth.

Q. I show you I. C. C. No. 262, with supplements, of the B., R. and P. What is that tariff, generally speaking?—

9750 A. I. C. C. No. 262, joint tariff No. A–32, states that it supersedes eastbound billing list No. 1, dated September 1, 1889. Tariff I. C. C. No. 262 was issued by the Buffalo, Rochester and Pittsburg Railroad Company in connection with various other roads, among which I find the Boston and Maine, Central Vermont, Maine Central, Rutland Railroad, and other railroads.

Q. Down to what period of time do the supplements come?—A. May I explain this tariff just a trifle more?

Q. Certainly.—A. In the middle of the page it states it is the basis for eastbound rates to points on the roads shown on the first sheet. It was issued December 22, 1896; took effect January 1, 1897. This tariff does not name rates, being, as stated on its first page, a basis for rates. It shows, for example, that Amherst, Massachusetts, takes Boston rates. Effective the same date as the original tariff—namely, January 1, 1897—Supplement No. 1 to said tariff was issued providing for the rates themselves.

Q. How long did that tariff remain in effect?—A. That tariff, together with the supplements I have, was received by me from the Buffalo, Rochester and Pittsburg road as being in effect December 3, 1907. I will say, if you please, that the supplements qualify, in some respects, the original tariff and the original supplement.

Q. What is Supplement No. 9, and when did that become effective?—A. Supplement No. 9 became effective November 14, 1899.

Q. And remained effective how long?—A. It was received by me from the B., R. and P. road as being in effect December 3, 1907.

9751 Q. Using I. C. C. 262, the tariff that you have before you of the Buffalo, Rochester and Pittsburg Railroad, and supplement No. 9, being the supplement to that tariff, which was effective from November 14, 1899, until 1907, what do you find (if you find anything upon the subject) was the rate per hundred in less than carload lots on petroleum from Bradford, Pennsylvania, to points named therein?

Mr. KELLOGG. I object, unless the witness reads the part of the tariff that particularly names the rate.

A. I will give that. Hand me that classification, please.

Q. First answer my question generally, and then point out specifically for Mr. Kellogg's benefit the basis of your answer.—A. To points taking the Boston rates the rate was 33 cents per 100 pounds.

Q. How do you determine that?—A. The original tariff, No. 262, states that the rates provided for therein will be subject to the official classification. I have before me a copy of the official classification dated May 15, 1899, two years after the date of the tariff. I am unable to find an earlier copy of the official classification. I would like to change that date to read February 1, 1899, instead of May 15.

Q. But the classification that was in effect at the time that supplement No. 9 was issued?

Mr. MARTYN. In November, 1899.

A. That classification was in effect at the time that supplement No. 9 was issued.

9752 Q. Now point out just how you make the 33-cent rate.—A. On page 88 of that classification I find the following: "Oil, petroleum, kerosene, carbon, mineral or coal; benzine, benzole, gasoline, and naphtha in wood, 3" (in a column under the heading "L. C. L.," meaning that it took third-class rate in less than carload quantities).

Q. And what do you find the third-class rate to be?—A. And I find in supplement 9 that the third-class rate to points taking Boston rates from all points on the Buffalo, Rochester and Pittsburg road, Charlotte, New York, to Lindsey, Pennsylvania, both inclusive, including Bradford, Pennsylvania, was 33 cents per 100 pounds.

Q. And how do you determine what points took the Boston rates?—A. By reference to the original tariff.

Q. And what is there that indicates that?—A. There is a list of stations in New England——

Q. Enumerated in the original tariff?—A. There is a list of stations in the original tariff showing the State in which they are located, the railroads on which they are located, and the rates that they take.

Q. What do you mean by the original tariff?—A. I. C. C. No. 262 is what I mean.

Q. Of the Buffalo, Rochester and Pittsburg?—A. Yes, sir.

Q. Are those towns that are thus specifically named the towns that take the Boston rate, as shown by that tariff?—A. Where the tariff so provides.

Q. Well, does the tariff so provide with respect to towns which it enumerates?—A. It does to a great many. Some towns take New York rates, some Boston, some Portland, some Utica, some Oswego.

Q. But that is all indicated upon the tariff, as the case
9753 may be?—A. That is all plainly indicated on the tariff.

Q. Now, taking the tariffs in that way, you find, as I understand, that the rate on petroleum from Bradford, Pennsylvania, to points in New England taking the Boston rate named in that tariff, the rate was 33 cents per 100 pounds on less than carload lots from 1899 to 1907?—A. Generally speaking, that is true. There were some qualifications governed by succeeding supplements.

Q. Do those qualifications affect the general statement to any degree whatever, so far as the Rutland road is concerned?—A. I read as follows from supplement No. 12 to I. C. C. No. 262, taking effect February 15, 1900: "The application of the above-named tariff"—namely, I. C. C. No. 262—"to points on the following roads is hereby withdrawn and canceled."

Q. And what roads are named?—A. Bennington and Rutland, Boston and Maine, Central Vermont, Maine Central, Montpelier and Wells River, Portland and Rochester, Portland and Rumford Falls, Rutland Railroad, St. Johnsbury and Lake Champlain Railroad. "Hereafter rates will be made on combination of locals."

Q. How long did that supplement remain effective?—A. This supplement is on general merchandise; therefore covers all classes of traffic destined to points on those roads.

Mr. KELLOGG. Including oil?

WITNESS. Includes everything. This is not an oil tariff. It is a general merchandise tariff. The supplement I have just been reading
from took effect on February 15, 1900. On March 9, 1900,
9754 less than a month afterwards, supplement No. 13 to I. C. C. No. 262 was issued. This supplement also applies on general merchandise. I am now reading from the supplement: "The application of the above-mentioned tariff to points on the following roads is hereby restored: Bennington and Rutland Railroad, Boston and Maine Railroad (taking Boston and Exeter divisions), Portland and Rochester Railroad, Rutland Railroad." Then appears, in large type, the word "Addition," and under that word "Addition" appears "Burlington, Vermont," as located on the Rutland Railroad and as taking Boston rates and Fitchburg divisions. On January 8,

1901, supplement No. 15 to I. C. C. No. 262 took effect. This supplement also applies on general merchandise and was issued for the purpose of making the following additions.

Mr. KELLOGG. I object to his stating what the purpose of it was. Please state what it is.

WITNESS. Yes, sir. I will cut that out. I thought I was making that just straight, Mr. Kellogg. This supplement applies on general merchandise, and under the word "Additions" are the following: Five columns, the first one of which is headed "Station," the second "State," the third "Railroad," the fourth "Rates," the fifth "Divisions." Under the head "Station" appears "Alburgh, Grand Isle, Isle La Motte, North Hero, South Hero, Vermont, and Noyan Junction, P. Q., all as being located on the Rutland Railroad and all as taking Boston rates and Fitchburg divisions. Some other supplements were issued to the tariff, but they do not appear to have any bearing on the subject.

Q. Have you set out in any exhibit a town named in that tariff as taking the Boston rate?—A. I think there is one.

9755 Q. Does that tariff set out by name the various towns on those different roads that take the Boston rate?—A. It does.

Q. What is defendants' Exhibit 122?—A. Defendants' Exhibit 122 is a table showing comparative cost of transportation in cents per 100 pounds from Olean, Bradford, and New York Harbor to various points on the Rutland Railroad in Vermont.

Q. That is, the towns named in Exhibit 122 are towns located on the Rutland Railroad in the State of Vermont?—A. That is the way the statement reads; yes, sir.

Q. Under the head of "Bradford" in Exhibit 122 you show the rate to be 33 cents per 100 pounds—from Bradford to these stations named, located on the Rutland Railroad, do you?—A. That is correct.

Q. And you get that rate of 33 cents from Bradford to those towns from the tariffs that you have just named and which you have had before you and which Mr. Schindler now has before him?—A. That is correct.

Q. That is, the I. C. C. 262 of the B., R. and P., together with the supplements that you indicated?—A. Yes, sir.

Q. Nos. 1 and 9.—A. That is fully set forth, may I say, under paragraph 2 on the second page of the exhibit.

Q. And are these towns so listed on defendants' Exhibit 122 towns which take Boston rates under the tariffs that I have just named?—A. I would have to look at that exhibit. I do not understand whether that exhibit says Boston rates—I mean the petition. Please give me that question again.

(The question was read by the reporter.)

9756 A. That is correct.

Q. So that the rate from Bradford to these towns so listed you find to be 33 cents from the tariffs just in. Take the column

under the head of "New York Harbor." You give the rates per 100 pounds there, as I understand, in Exhibit 122, from New York Harbor to these various towns set out, located on the Rutland road?—A. That is correct.

Q. Will you please tell us how you arrived at the rates from New York Harbor to these towns, as set out in this exhibit?—A. The rate by water from New York Harbor to Burlington was 6¼ cents per 100 pounds. I have added to that 2¼ cents per 100 pounds for the wharfage at Burlington, and have added to that the second-class rate out of Burlington shown in Rutland Railroad tariff I. C. C. 421, effective December 10, 1900.

Q. And continuing in effect until when?—A. I understand that tariff is still in effect, as far as I know.

Q. The 2¼-cent wharfage rate includes also the transfer from the wharf to the cars, does it not?—A. Yes, sir.

Q. Where did you get that rate from?—A. I got that from river men and handlers of water goods located both at New York and at Burlington.

Q. So that has been the prevailing wharfage and transfer rate during the years in question?—A. I so understand; yes, sir.

Mr. ROSENTHAL. I will say to counsel for the Government that when we get back to New York we will call certain witnesses
9757 by whom we will make exact legal proof of the water rate from New York to Burlington and the wharfage rates just now testified to by Mr. Felton. His information upon that is secondary.

Q. And where did you get the water rate from New York Harbor to Burlington?—A. I obtained that from a river man who handles considerable traffic of all kinds from New York Harbor direct to Burlington.

Q. Take the very first town named in Exhibit 122, Alburgh. As I understand you, then, you take the water rate of 6¼ cents from New York Harbor to Burlington; you add to that 2¼ cents wharfage and transfer charges, and you add to that the second class rate on the Rutland Road from Burlington to Alburgh?—A. That is correct.

Q. Is petroleum in the second class?—A. It was made second class by an exception sheet to the Official Classification issued by the Rutland Railroad.

Q. When?—A. This one I have, which seems to have been the only one I could get hold of, was December 1903.

Q. At all events the Government in this exhibit, found on page 143 of the petition, has treated petroleum as being in the second class?—A. Yes, sir.

Q. And we adopt their treatment of it in that regard?—A. Yes, sir.

Q. So that from 1899 to 1907 it was possible to ship petroleum from New York Harbor to Alburgh, Vermont, via an all water route at 27½ cents a hundred?—A. All water to Burlington.

Q. And by rail from Burlington on?—A. That is the in-
9758 formation I have obtained from the men who handle the business.

Q. And these other rates that are set down opposite the towns named on Exhibit 122, under the head of New York Harbor, are explained by you in the same way that you have explained the Alburgh rate?—A. That statement was compiled under my instructions on those same rules.

Q. Now, the last right-hand column, under the head of "Olean," means what?—A. That shows the cost of getting a shipment from Olean to Alburgh, for example, the first station.

Q. Via what route? From Olean to Rochester——A. I was going to say that the computation as to the through rates under the heading Olean is made via Burlingon, Rutland, or Bellows Falls as the letters "B. R." or "B. F." follow the numerals under that heading.

Mr. KELLOGG. What tariffs?

WITNESS. Are made by taking the combination of locals, for example, from Olean to Burlington.

Mr. ROSENTHAL. I will develop that in just a minute.

Q. "B," opposite the figures "42.8," stands for Burlington, does it?—A. That is true.

Q. And "R," wherever it appears, stands for what?—A. Rutland.

Q. And the letters "B. F.," wherever they appear, stand for what?—A. Bellows Falls.

Q. These were the three towns that were selected by the Government in the exhibits which they have put in evidence?—A. I so understand.

Q. Now, how did you get the rate from Olean to Alburgh,
9759 as shown on defendants' Exhibit 122?—A. I took the rate of 9 cents a barrel—the equivalent is 2.8 a hundred from Olean to Rochester—the rate of 9 cents a hundred pounds from Rochester to Norwood and $23 per car from Norwood to Burlington.

Q. That is, you took the same rate which the Government's proof in this case shows the products of the Standard Oil Company were shipped under?—A. I took the same combination of rates; yes, sir.

Q. That is what I mean.

Mr. KELLOGG. Go ahead and state it. You took the $23 rate. That is how many cents a hundred?

Mr. ROSENTHAL. That is all computed, Mr. Kellogg, in Exhibit 120, which we have already put in.

Q. In order to get the hundredweight rate from Olean to Alburgh you computed it as shown on defendants' Exhibit 120?—A. That is correct.

Mr. KELLOGG. That would make 27 cents from Burlington to Alburgh?

Mr. ROSENTHAL. No.

Mr. KELLOGG. From Burlington to Alburgh would make 27 cents?

Mr. ROSENTHAL. I will show that now.

Q. How did you get the rate, then, from Burlington to Alburgh?—A. I added half a cent per gallon, or 8 cents per 100 pounds, for the cost of maintaining and handling the bulk station at Burlington, as an actual element of cost; and I then added the second class rate from Burlington to Alburgh, as shown in the same Rutland Railroad tariff 421.

9760 Mr. KELLOGG. How much was it—that is what I asked you—how much a hundred pounds?

WITNESS. I will tell you, sir [after referring to papers and figuring]. The second class rate from Burlington to Alburgh is 19 cents.

Mr. KELLOGG. As a matter of fact your rate was 10 cents, wasn't it?

Mr. ROSENTHAL. Wait a minute. I am showing how he got this rate.

Mr. KELLOGG. I am showing it is not correct. You don't pretend you made any shipments on that rate, do you?

Mr. ROSENTHAL. He is testifying to what the rate was.

Mr. KELLOGG. Well, it was not. It was 10 cents.

Mr. ROSENTHAL. It was not. You say it was and we say it was not.

Mr. KELLOGG. He has not said it was not 10 cents yet. That is what I asked him, if it was not 10 cents from Burlington to Alburgh.

WITNESS. I am talking about a shipment made over the Rutland road.

Mr. KELLOGG. Did you ever ship anything over any tariff of that kind?

Mr. ROSENTHAL. Wait a minute.

Q. Where did you get the 8 cents per hundredweight or one-half cent per gallon which you add to the cost of that transportation, and why do you so add that?—A. I add that as an actual element

9761 of cost in getting the business from Olean to Alburgh by virtue of the maintenance of a tank station at Burlington.

Q. Do you break bulk at Burlington in the shipments that are made from Olean to Alburgh?—A. Carload shipments are made from Olean to Burlington, and then broken bulk, and reloaded into barrels and made out in less than carload lots to a great many points in Vermont.

Mr. KELLOGG. From Alburgh?

WITNESS. I understand Alburgh takes less than carload shipments.

Mr. KELLOGG. Tank station, isn't it?

WITNESS. I don't know, sir.

Q. From whom did you get the cost of the maintenance of your Burlington station?—A. From the manager of the Burlington station.

Q. I mean from whom did you get the figures tending to show or showing that the cost of breaking bulk in the way that you have described was 8 cents per hundredweight?—A. From the manager at Burlington.

(A recess was here taken until 2 o'clock p. m., at which time the examination was resumed.)

Mr. ROSENTHAL. Mr. Felton, I have advised counsel on the other side that I have struck out from defendants' Exhibit 122 the town of Alburgh. It should not have been in that exhibit. It is in the next exhibit that we shall offer.

Q. I think you have explained now fully, have you not, everything that there is on Exhibit 122?—A. Yes, sir.

9762 Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 122.

By Mr. KELLOGG:

Q. The second column, the Bradford rates, 33 cents, are less than carload and carload rates both, are they?—A. They apply on both; yes, sir; under the classification.

Q. The third column is less than carloads from Burlington to stations named in the first column?—A. Yes, sir.

Q. Or from Rutland or Bellows Falls, as indicated by the letter?—A. Yes, sir.

Q. In other words, from the distributing point of Burlington, Rutland, or Bellows Falls the rates named in the third column are less than carload rates?—A. Yes, sir.

Q. On second class commodities?—A. Yes, sir.

By Mr. ROSENTHAL:

Q. Do you know whether the towns indicated on Exhibit 122 are supplied from Burlington in less than carload lots?—A. I understand that a great many of them are not so-called tank stations, taking L. C. L. shipments only.

By Mr. KELLOGG:

Q. Now, Mr. Felton, you understand that they are not tank stations?—A. A great many of them.

Q. What I wish you to procure, if you have not now got it, is whether you did, during the years 1904, 1905, and 1906, actually ship on those rates from Burlington, Bellows Falls, and Rutland?—A. I will get that information, sir.

Q. Or whether the oil went to those stations by tank wagons

9763 from other places?—A. Yes, sir.

Q. Or by other rates?—A. Yes, sir.

Q. I want to know the exact shipments and how the shipments were made and the rates they paid, if you will inform yourself on that subject.—A. I will do that, sir. We have an extra copy of that, Mr. Rosenthal?

Mr. ROSENTHAL. Oh, yes; we have it in our briefs.

WITNESS. It may take some time to get that, Mr. Kellogg, but I will get it before we finish.

Mr. KELLOGG. That information to include the carload rates from those terminal points, if they use a carload.

WITNESS. I will do that, sir.

Mr. KELLOGG. And do you know whether the Standard Oil Company did actually ship by water to Burlington as indicated in this first column, New York Harbor?

WITNESS. The Standard Oil Company did make some shipments by water to Burlington.

Mr. KELLOGG. Will you procure the information as to those also?

WITNESS. I will.

By Mr. ROSENTHAL:

Q. Defendants' Exhibit 123 is what?—A. Table showing comparative cost of transportation in cents per 100 pounds from Olean, Bradford, and New York Harbor to various points on the Central Vermont Railway in Vermont.

Q. Now, that is made up in precisely the same way that defendants' Exhibit 122 is made up, excepting with respect to the rates
9764 under the head of Olean, is it not?—A. That is true.

Q. And how do you get the rate that is indicated under the head of "Olean?" Let me ask a leading question. I think there will be no objection to it. Do you take the 9-cent a barrel rate from Olean to Rochester, the 9-cent a hundredweight from Rochester to Norwood, and the $23 per car rate from Norwood to Burlington, and then from Burlington to destination named on Exhibit 123, the alleged secret rate set out on page 143 of the Government's petition?—A. That is correct, with the additional charge of 8 cents per 100 pounds, the cost of handling at Burlington.

Q. The additional bulk-breaking charge of 8 cents per 100 pounds, as you have heretofore explained?—A. Yes, sir.

Q. Due to the rehandling at Burlington?—A. Yes.

Q. Defendants' Exhibit 123 shows that the Bradford rate on the Central of Vermont was in force but a few months, does it not, under rule 2 of that exhibit?—A. That is correct.

Q. In 1899?—A. I would like to see the data.

(Witness refers to the exhibit.)

Q. Is that correct?—A. Yes, that is correct. Supplement No. 9 cancels rates to points on the Central Vermont.

Q. And when that 1899 tariff was canceled by the Central of Vermont, prorating then stopped on the Central of Vermont by virtue of that cancellation at that time?—A. That is true, and according to the supplement——

Q. As to all commodities?—A. As to all commodities.

9765 Q. Now, there is no question about that, is there? It was not merely a stopping of prorating with respect to petroleum; it was a stopping of prorating with respect to all merchandise?—A. General merchandise.

Q. Including petroleum?—A. Yes, sir.

Q. Do you know when the Central of Vermont became part of the Grand Trunk System?—A. I had the information, but it has slipped my mind. It was sometime along in 1902 or 1904.

Q. It was in 1899, Mr. Felton.—A. I ascertained the fact from some railroad manual, but the exact date has slipped my mind.

Q. Poor's Manual shows that it was in 1899.—A. Yes, sir.

Q. And it was after the Vermont Central became part of the Grand Trunk System that it stopped prorating with other roads?—A. I can't say how far they stopped prorating with other roads, but the supplement to B. R. and P. tariff I. C. C. No. 262 was issued subsequent to the operating control of the Central Vermont by the Grand Trunk System.

Q. Does the Grand Trunk run to Toledo?—A. They have a line out of Toledo; yes, sir.

Q. So that after the Vermont Central became part of the Grand Trunk System, petroleum could be hauled from Toledo to Vermont points reached by the Vermont Central entirely over the Grand Trunk System?—A. That is true, considering that the Vermont Central was part of the Grand Trunk System.

Q. Have you any tariff showing the application of Boston
9766 rates from Toledo to all points on the Central Vermont Railway?—A. I have.

Q. Will you give us the number of that tariff and the date when Boston rates were applied by the Grand Trunk road from Toledo to all Central Vermont points?—A. I have a tariff right here in my hand that named Boston rates from Toledo to points on the Central Vermont.

Q. Describe it by its I. C. C. number and the name of the road issuing it.—A. It was issued by the Grand Trunk System. Its number is I. C. C. A-944.

Q. Issued when and effective when?—A. It was issued December 7, 1904, effective December 12, 1904.

Q. Does that tariff apply Boston rates from Toledo to all points on the Vermont Central road; and, if so, point out in what way it does it?—A. It does in connection with documents to which the tariff refers.

Q. What documents?—A. This tariff is a tariff issued by the Grand Trunk Railway System and Detroit and Toledo Shore Line Railroad in connection with a number of railroads shown on the front page, including the Central Vermont. It enumerates some 24 or 25 roads, including the Central Vermont, and then adds: "And connections as specified in the following Agents' Guides and Billing Lists." I will refer to one of the billing lists a little later. On the second page of the tariff I find this heading: "From Toledo, Ohio, to trunk line territory." Among other points named in the tariff is Boston, Massachusetts, showing a rate of 27 cents per 100 pounds.

9767 Q. From Toledo to Boston?—A. Yes, sir. This tariff reads: "Joint freight tariff on petroleum products, carloads, in wood or tanks, crude and fuel oil, crude naphtha, crude and refined petroleum and products of petroleum, viz: Lubricating oil, benzine, naphtha, gasoline, paraffine, paraffine wax, tar, and residuum; from Toledo, Ohio, to points in Central Freight Association territory and Trunk Line territory." Returning to page 2, under the heading "From Toledo to Trunk Line territory," and reading the rate of 27 cents per 100 pounds to Boston, I find the following: "For list of stations

to which above rates apply, see various Fast Freight Line billing instructions." Going back to the first page, I find, under the head "Billing list," etc., among others, the National Despatch-Great Eastern Line. If you will kindly let me have that document I will connect up the rates.

(A document was handed witness by Mr. Martyn.)

Mr. MILLER. What is the document that you asked for and now have?

WITNESS. The document I have is National Despatch-Great Eastern Line, Shippers' and Agents' Guide No. 9, operating in connection with Grand Trunk Railway System, Central Vermont Railway Company, Boston and Maine Railroad, and connections.

Q. Is that the document referred to in the tariff?—A. It is, for the reason that it was issued in January, 1903, and is still in effect, as I understand, and the commodity tariff was not effective until December 12, 1904. Therefore this must necessarily have been the National Despatch-Great Eastern Line Guide referred to on
9768 the first page of tariff I. C. C. No. A–944. By referring to the body of the tariff I find, on page 26, in common with entries on other pages, a list of stations with appropriate headings, showing the station, the State, the railroad on which the station is located, a point to which waybills must be made and the rates to be applied. On page 26 I find: Burlington, Vermont, on the Central Vermont Railroad, with instructions to waybill to Burlington at Boston rates, thereby appplying the 27-cent rate named in tariff I. C. C. 944 to Burlington.

Q. How about the other points on the Central Vermont Railroad? How do you apply the Toledo-Boston rate to those other points? In the same way that you have done to Burlington?—A. Yes, sir. There is a large number of them here. I will just pick out one haphazard. Here is Cambridge, Vermont, on page 27, located on the Central Vermont Railroad, waybill to Cambridge at Boston rates. There are a great many more here, but I do not see them just for the moment.

Q. Does your examination of that tariff, that you have heretofore made, warrant you in saying that the Toledo-Boston rate is applied to all the points therein named on the Central Vermont?—A. Yes, sir; that is correct. Here is another station, Cloverdale, Vermont; waybill to Cloverdale at Boston rates. Cushman, Massachusetts, Central Vermont; waybill to Cushman at Boston rates. East Berkshire, Vermont, Central Vermont Railroad; waybill to East Berkshire at Boston rates. And so it goes. There is a long list of Central Vermont stations. Here is Essex Center, Vermont; waybill to
9769 Essex Center at Boston rates. Essex Junction, on the Central Vermont; waybill to Essex Junction at Boston rates. Some points take higher than Boston rates on all classes of goods.

Q. That large book that you hold in your hand you call what? How is it designated?—A. National Despatch-Great Eastern Line, operating in connection with Grand Trunk Railway System, Central

Vermont Railway, Boston and Maine Railroad, and connections, Shippers' and Agents' Guide No. 9.

Q. Now, that excepts oil, does it not? Read that exception.—A. It says on page 1, under the side reference "Petroleum and its products," the following, which I will read: "Petroleum or its products, whether in tank cars or in packages, must not be taken under the instructions of this guide, but such shipments will be subject to special tariffs and local regulations of railways interested."

Q. Where are the special tariffs, or where is a special tariff referred to there?—A. The special tariff referred to under that rule would be I. C. C. No. 944.

Q. Now, from the combination of those two tariffs you make the rate from Toledo to Boston 27 cents, as I understand it?—A. Yes, sir.

Mr. KELLOGG. That is objected to as incompetent. The tariffs are the best evidence of what the rate is.

Q. Is that right?—A. That is right; yes, sir.

Q. That is the way, as I understand you, that you read and construe those tariffs?—A. That is the only conclusion that I can possibly reach.

Mr. ROSENTHAL. I would like to have those two documents marked for identification, because I propose to use them
9770 later on. Please mark them defendants' Exhibits for identification 124–A and 124–B.

(The documents were so marked.)

Q. The two documents that you have just been testifying from are defendants' Exhibits for identification 124–A and 124–B, are they?—A. Yes, sir.

Q. Do you know whether there were, during the years 1900 to 1907, independent refineries located at Toledo?—A. Yes, sir.

Mr. KELLOGG. Are you through with these? [Referring to 124–A and 124–B.]

Mr. ROSENTHAL. I have not offered them. I only had them marked for identification.

Mr. KELLOGG. Are you going to offer them?

Mr. ROSENTHAL. I am when I put certain Grand Trunk witnesses on.

Mr. KELLOGG. I want to ask this witness a question or two about them. Defendants' Exhibit 124–A does not name any rate to any point on the Vermont Central Railroad, does it, that exhibit alone?

WITNESS. No, sir; that is right.

Mr. KELLOGG. It only names rates to Boston and certain other points?

WITNESS. I will have to answer your question in the general manner that you ask it. It names rates to Boston and other points.

Mr. KELLOGG. That is what I asked you. And those points are not, any of them, on the Central Vermont Railroad?

WITNESS. Those points are on the Central Vermont.

9771 Mr. KELLOGG. I mean named in 123–A——

WITNESS. 123–A refers to a document.

Mr. KELLOGG. Now, that is not what I asked you at all and you know it. I asked you if that document on its face named any rates to any point on the Vermont Central Railroad.

Mr. ROSENTHAL. I object to it. The document on its face shows what it names.

Mr. KELLOGG. Does it, Mr. Felton?

WITNESS. You have asked the question in a general way and you want to pin me down to a specific answer.

Mr. KELLOGG. No; I ask it in a specific way. Does the document 123–A on its face name any rate on petroleum and its products to a station on the Vermont Central Railroad?

WITNESS. The document itself does not.

Mr. KELLOGG. Very well. Then it refers to 124–B for the rates on the Central Vermont Railroad, does it?

WITNESS. It does.

Mr. KELLOGG. And 124–B excepts petroleum on its face, doesn't it?

WITNESS. Unless special tariffs are issued. That is in the exception.

Mr. KELLOGG. 123–A is not the tariff, is it?

WITNESS. Yes, sir.

Mr. KELLOGG. To a point on the Central Vermont?

WITNESS. Yes, sir.

Mr. KELLOGG. By itself, standing alone?

WITNESS. Yes, sir; under the rules of the Interstate Commerce Commission.

9772 Mr. KELLOGG. Without any other document?

WITNESS. Yes, sir; by referring to the document that gives the list of stations.

Mr. KELLOGG. But the document that gives the list of stations excepts petroleum, doesn't it?

WITNESS. Unless a special tariff is issued.

Mr. KELLOGG. I offer the documents in evidence as part of the cross-examination of Mr. Felton.

Mr. ROSENTHAL. I have no objection to your offering them at this time, because we are going to put them in later on.

Mr. KELLOGG. Did you offer 123 in evidence?

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 123.

Mr. KELLOGG. I wish to ask a question or two about that. Referring to Exhibit 123, the rate from New York Harbor is made up in the same way as it was in Exhibit 122?

WITNESS. I did not go over all those figures, but under my instructions it was prepared on that same basis.

Mr. KELLOGG. No. 3, under the head of "Olean," you have used the billing order (or whatever it was called) referred to on page 143 of the bill of complaint and added 8 cents a hundred to it, haven't you?

WITNESS. I instructed that statement to be prepared, using the so-called secret rates on page 143 of the petition, plus 8 cents per 100 pounds.

Mr. KELLOGG. What was the 8 cents per 100 pounds?

WITNESS. For the cost of handling, unloading in tank
9773 cars, and barreling at Burlington.

Mr. KELLOGG. Did you add anything to the Bradford rate for barreling the goods?

WITNESS. No, sir.

Mr. KELLOGG. The Bradford rate is also a less than carload rate, is it not?

WITNESS. Shipped direct from the refinery.

Mr. KELLOGG. It has to be barreled, hasn't it?

Mr. ROSENTHAL. At the refinery.

WITNESS. At the refinery.

Mr. KELLOGG. The expense in barreling is the work in barreling the oil, isn't it?

WITNESS. An expense of barreling would be for barreling the oil, but the 8 cents was added for the expense of the maintenance of the Burlington plant.

Mr. KELLOGG. The Burlington plant was a plant for distributing oil by tank wagon, too, wasn't it?

WITNESS. For various distribution; yes.

Mr. KELLOGG. And you have taken that total expense, have you?

WITNESS. No, sir; the total expense was 2 cents a gallon.

Mr. KELLOGG. Have you the statements from which you made that up?

WITNESS. I received those figures from the manager of the Burlington plant.

Mr. KELLOGG. Now, that assumes that oil going to all of these stations was barreled at Burlington and 8 cents charged for it, and then reshipped on the secret rate shown on page 143, does it?

9774 WITNESS. Eight cents added to the cost of marketing.

Mr. KELLOGG. Now, as to some of these stations in column 1——

Mr. ROSENTHAL. Now, you are getting right into material that I was just going to develop here as to all excepting 9 of those stations.

Mr. KELLOGG. In some of those stations in column 1 you simply reconsigned it in carloads, didn't you?

WITNESS. That is true.

Mr. KELLOGG. And did not barrel it at all?

WITNESS. That is true.

Mr. KELLOGG. Which are they?

Mr. ROSENTHAL. Now, if you will let me take my witness I will go on.

By Mr. ROSENTHAL:

Q. As to how many of the points named there, Mr. Felton, were the cars simply reconsigned at Burlington?—A. I do not recall. There were a number of points.

Q. Did you refresh your recollection on that by examining page 144 of the Government's petition?—A. I find, by referring to page

144 of the petition, that it is alleged that the Standard Oil Company had special carload rates from Burlington, Vt., to 9 stations.

Q. So that those 9 stations received the benefit of a carload rate from Burlington?—A. That is true.

Q. In so far as shipments were made from Burlington to these stations in carload lots?—A. That is true.

Q. And in so far as shipments were made to those stations
9775 in less than carload lots they paid the rates indicated on defendants' Exhibit 123?—A. That is true.

Q. Now, with the exception of those nine, how many other points are there that receive less than carload shipments, paying the less than carload lot rates?—A. I have no information with me that shows just what points or to what extent less than carload shipments were made.

Q. But as to all the other points named, whenever shipments were made they were made at less than carload lot rates?—A. If shipments were made in less than carload lots, they were made, as I understand it, at the rates named in the statement.

Q. I think there are some ninety-two points, as we count them out. It has been contended by the Government, Mr. Felton, that the rate from Rochester to Norwood of 9 cents a hundred on petroleum, which was the prevailing rate there for many years, was an extremely low rate, so alleged on page 140 of the Government's petition. Have you determined what the rate per ton per mile is between these two points on the basis of 9 cents per hundred?—A. I have.

Q. I show you defendants' Exhibit 125. That exhibit shows rates between different points throughout the country, the distances, and the rate per ton per mile, does it not?—A. It does.

Q. And wherever you show a rate between two cities, as for example Toledo, Ohio, to Cincinnati, Ohio, the rate 10 cents, you give in a note attached to the exhibit your tariff authority, do you not?—A. I do.

9776 Q. And that is true of all the rates that you mention on this exhibit, is it not?—A. The statement so reads; yes, sir.

Q. Now, the rate from Rochester to Norwood was 9 cents a hundred. What was the distance?—A. 210 miles.

Q. Which would make the rate per ton per mile what?—A. 9 mills per ton per mile.

Q. The rate from New London to Burlington, Vermont, was how much?—A. 12 cents.

Q. The distance how much?—A. 273 miles.

Q. And the rate per ton per mile?—A. 8.8 mills.

Q. Now, you take Toledo as a basis, and you show the rates from Toledo to Cincinnati, to Louisville, to Terre Haute, to Vincennes, Indiana, to Brownstown, Indiana, and to Indianapolis, do you not?—A. I do.

Q. And then figure the rate per ton per mile there?—A. That is correct.

Q. You have already testified that at Toledo there are a number of refineries that are not owned or operated by the Standard Oil Company. What is the fact in that regard with respect to Cleveland?—A. There are refineries, or, at all events, oil shippers, at Cleveland with which the defendant has no connection.

Mr. ROSENTHAL. I think the Government will concede there are independent refineries there.

Q. And at Pittsburg, Pennsylvania?—A. That is true of Pittsburg.

Q. And at Wellsville, New York?—A. Yes, sir.

Q. So that the points that you have selected here to institute
9777 a comparison with, in so far as the Rochester-Norwood 9-cent rate is concerned, are points throughout the country where there are independent refineries?—A. That is true.

Mr. ROSENTHAL. I offer defendants' Exhibit 125 in evidence.

Mr. ROSENTHAL. Now, Mr. Kellogg, as you will observe, we have simply indicated in our note here our tariff authority for those rates. If you wish us to produce those tariffs to verify those rates, we will do so.

Mr. KELLOGG. No, I do not care about it.

Mr. ROSENTHAL. All right.

Mr. KELLOGG. You have not compared the rate per ton per mile from Pittsburg, Wellsville, Bradford, Titusville or any of these other shipping points to Norwood with this, have you?

WITNESS. I have not.

Mr. KELLOGG. That rate per ton per mile is a good deal higher than this, isn't it?

WITNESS. I don't know, sir; I have not checked up the rates.

Mr. KELLOGG. You know what the rate is, don't you?

WITNESS. I couldn't say.

Mr. ROSENTHAL. He has only done what this exhibit shows on its face he has done, Mr. Kellogg, and I offered it for that purpose.

Mr. KELLOGG. It is a general principle on railroads that the longer the haul the lower the rate per ton per mile, isn't it?

WITNESS. Generally speaking, but not always true.

9778 Mr. KELLOGG. Well, generally?

WITNESS. Quite generally; yes, sir.

Mr. KELLOGG. That New London rate to Burlington, Vermont—there is no other shipper from New London to Burlington, Vermont, except the Standard Oil, is there?

WITNESS. I could not say.

Mr. KELLOGG. You know there is no other New London refiner or station there, except the Standard Oil?

WITNESS. I do not know——

Mr. KELLOGG. Do you know of any?

WITNESS. I do not know of any.

By Mr. ROSENTHAL:

Q. Do you know anything about it?—A. I do not know anything about it. New London is a large Sound seaport point, through

which the Central Vermont road takes a very large volume of business.

Mr. KELLOGG. You never heard of any shipments of any other company from New London to Burlington, did you?

WITNESS. No, sir.

Mr. KELLOGG. You keep pretty close track of those shipments, don't you?

WITNESS. Not particularly.

Q. It is contended by the Government that the 12-cent rate from New London to Burlington is an exceedingly low rate—the 12-cent rate on petroleum—and Mr. Kellogg's questions that he asked just a moment ago were directed to the elucidation of that proposition. Do you know of tariffs between New London and Burlington cov-
9779 ering commodities other than oil?—A. I made some few inquiries in that line. I did not go into it very deeply.

Q. Have you tariffs here showing rates between New London and Burlington, Vermont, on the Central Vermont Railroad, covering commodities other than petroleum?—A. I have tariffs from New York to Burlington, Vermont, issued by the Central Vermont Railway. They read *from*, not *between*.

Q. From New York?—A. Yes, sir.

Q. On what commodities?—A. I have before me just now Central Vermont Railway Tariff I. C. C. A-2176. Shall I just give the I. C. C. number?

Q. Yes.—A. Issued July 18, 1907.

Q. Give the I. C. C. number in describing it, the name of the railroad, and the date it is effective, and that is enough.—A. I will correct that. I have before me I. C. C. Tariff A-2176, issued by the Central Vermont Railroad, effective August 20, 1907. It is called a local commodity tariff, applying on salt, in carloads, from New York, Pier New No. 29, East River, to Burlington, Vermont, and names a rate of 12 cents per 100 pounds.

Q. What would be the route that that property would take?—A. Having been issued by the Central Vermont Railroad, it would have had to go by New London.

Q. By water from New York to New London and by Central Vermont rail from New London to Burlington?—A. That is correct.

Q. What is that rate—12 cents?—A. 12 cents.

Q. So that on salt the Vermont Central has issued a 12-cent
9780 rate from New York to Burlington, as against a 12-cent rate on petroleum from only New London to Burlington?—A. That is correct.

Q. And making that rate from New York necessitates a transfer of the property from boat to rail after it reaches New London, does it not?—A. That is correct.

Q. Now, what other commodities?—A. I have also I. C. C. A-2183 issued by the Central Vermont Railway, effective August 22, 1907, naming a rate on sugar in carloads from Pier 29, East River, New York, to Burlington, Vermont, of 15 cents per 100 pounds.

Q. What other tariff?—A. I have another tariff I. C. C. No. 2182 issued by the Central Vermont, effective August 22, 1907, naming a rate on glucose of 17 cents per 100 pounds from Pier 29, East River, to Burlington, Vermont. This tariff, I. C. C. 2182, contains the following notation: "Includes lighterage."

Q. What does that mean?—A. That means that out of that 17 cents the Central Vermont Railroad would pay the regular New York Harbor lighterage charges to get the traffic to Pier 29. That notation also appears on I. C. C. 2183, naming a rate on sugar of 15 cents.

Q. Comparing those rates as indicated by those tariffs with the 12-cent rate on petroleum from New London to Burlington, what do you, as an expert traffic man, say as to whether the 12-cent petroleum rate was an exceedingly low rate?—A. In my opinion it was not only not an exceedingly low rate, but it was a very reasonable rate to make under the circumstances.

9781 Q. Generally speaking, are Bradford and Olean in the same rate-making territory?—A. Bradford and Olean?

Q. Yes, sir. Let me change that. Are Bradford, Olean, and Wellsville, New York, generally speaking, in the same rate-making territory?—A. No; I think there are some differences in rates prevailing from the territories surrounding those three towns.

Q. Do you know how far Wellsville is from Bradford?—A. It is between 60 and 65 miles by rail.

Q. Wellsville is in New York, is it not?—A. Wellsville is in New York; yes, sir.

Q. There is and has been for some years an independent refinery there?—A. That is true.

Q. And there are a number at Bradford, which is in Pennsylvania?—A. One or more, I understand, at Bradford.

Q. I show you defendants' Exhibit 126. In making up that exhibit have you taken the same towns that were selected by Mr. Schindler in making up Government Exhibit 621?—A. I took haphazard one of the Government exhibits, and I don't recall whether it was 621, but a comparison of the towns will show.

Q. My note is that it was Government's Exhibit 621.—A. Well, these towns commence with Arlington, Massachusetts, and end with Windham, New Hampshire.

Mr. ROSENTHAL. Have you the Government exhibits here, Mr. Durand, 621?

Mr. DURAND. Yes.

Mr. ROSENTHAL. Suppose we get that and let us make sure 9782 of it.

(Petitioner's Exhibit 621 was handed to Mr. Rosenthal.)

Q. As I recall Mr. Schindler's testimony in connection with petitioner's Exhibit 621, he testified, in substance, that the towns named on Exhibit 621 were selected by him as representative New England points on the Boston and Maine road. Now, in making up defendants' Exhibit 126 you have selected, have you not, those same towns?—A. Yes, sir; I have not compared them.

Q. Well, take a minute or so and make positive.—A. (After comparing the two exhibits.) Yes; they are the same towns that appear on petitioner's Exhibit 621.

Q. Then, defendants' Exhibit 126 is what?—A. Table of comparison of rates. It does not say petroleum rates, but that is——

Q. I would like to have you insert the word "petroleum" there so that there can be no question about it.

(The witness does as requested.)

WITNESS. From Bradford, Pennsylvania, and from Wellsville, New York, to various New England points, in effect during the year 1904.

Q. Why have you instituted a comparison between Bradford and Wellsville?—A. Simply to show that two independent refineries might be pretty close together and yet there would be a difference of rates prevailing from those refineries to the same points.

Q. Bradford and Wellsville are in the same general territory, are they not?—A. I have already answered that some differences prevail.

Q. And have you given here in connection with defendants' 9783 Exhibit 126 your authority for the rates thereon indicated?—A. Yes, sir; very carefully.

Mr. ROSENTHAL. Mr. Kellogg, unless you indicate to the contrary as we go along in connection with a situation of this kind, where we indicate our rate authority, we will not produce the original tariff. That is agreeable, is it?

Mr. KELLOGG. That is quite satisfactory.

Mr. ROSENTHAL. Wherever you want them just indicate it.

Mr. KELLOGG. If I should overlook them I will ask him to supply them afterward.

Q. The letters "C. L.," appearing on defendants' Exhibit 126, mean carloads, do they not?

Mr. KELLOGG. That is perfectly evident.

Q. And "L. C. L." mean less than carloads?—A. That is correct.

Q. Is there anything else in connection with defendants' Exhibit 126 that you wish to explain before it goes in?—A. It speaks for itself.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 126.

By Mr. KELLOGG:

Q. How many miles is it from Bradford to Olean?—A. I think about 26 miles or 25 miles, something like that. I don't know the exact distance.

Q. And Wellsville is about how far east?—A. 62 or 63 miles from Bradford.

Q. So Wellsville is in the neighborhood of 87 miles from Bradford?—A. No; not over 62 miles. Sixty-two miles, I think, is the distance from Bradford to Wellsville.

Q. The published tariff rate from Wellsville to these points 9784 is the same as it is from Olean, isn't it?—A. I could not say without a search of the tariffs.

Q. Isn't it a fact that on all other tariffs Wellsville, Olean, and Bradford all take the same rates?—A. I have never made any investigation into that line of work.

Q. You don't know, then, whether they are in the same general freight territory or not?—A. They are associated rather closely together geographically, but I have never investigated the rate situation.

Q. Beyond what you have indicated on this exhibit?—A. Yes, sir.

Q. I would like to have you get the exact distance of these two towns from each other. Government Exhibit 654 is entitled "Comparative rates from New London, Conn., to various stations on Central Vermont Railway," and was put in evidence by the Government through Mr. Boltz while he was upon the witness stand. Have you examined that exhibit?—A. I have.

Q. For the purpose of determining its accuracy and the deductions that are drawn by Mr. Boltz as appear upon the face of the exhibit?—A. That was my purpose.

Q. Now, please tell us what you find with respect to the accuracy of Government Exhibit 654.—A. I found it so inaccurate, based on the tariff references which it contains, that I had to abandon the investigation in despair.

Q. Explain that in detail, will you, please? What tariff is it that is referred to in Government Exhibit 654?—A. After setting
9785 forth the distances and class rates and oil rates of various kinds, the following appears: "Authority for the above rates: For class rates," and that means for the class rates named in this Exhibit 654 from New London, Connecticut, to the towns named under the heading "To"—"See Central Vermont Railway Northbound Local Freight Tariff G. F. D. No. 192, I. C. C. No. A–882." The G. F. D. number is correct, but the I. C. C. number is not.

Q. What is the G. F. D. number?—A. The G. F. D. number is 192.

Q. On Government's Exhibit 654?—A. Yes. There is some mistake in the G. F. D. and in the Central Vermont numbers here.

Q. A mistake in Boltz's citation, that is all.

Mr. MARTYN. He gives the G. F. D. number right, but the I. C. C. number wrong?

WITNESS. Yes.

Q. What is the number referred to on Government Exhibit 654 by Mr. Boltz?—A. Central Vermont Railway Northbound Local Freight Tariff G. F. D. 192. Central Vermont Northbound Local Class Rate Freight Tariff G. F. D. 192.

Q. You have, then, before you Central Vermont G. F. D. 192, that is apparently referred to by Mr. Boltz as his authority in Exhibit 654?—A. That is correct.

Q. And he appears to have stated wrongly the I. C. C. number?—A. The I. C. C. number given by him is I. C. C. No. A–822, whereas the I. C. C. number on G. F. D. No. 192 is I. C. C. No. A–882?—A. That is correct.

Q. Now, have you examined G. F. D. 192 of the Central Vermont road referred to by Mr. Boltz in petitioner's Exhibit 654?—A. I have.

9786 Q. And what do you find as to whether or not it verifies the statement made by him in Exhibit 654?—A. I find it does not.

Q. In what way?—A. I find that while he gives a series of rates as applying from New London to a number of points—and I will read quite a number of them: Montville, Connecticut; Norwich, Connecticut; Yantic, Connecticut; Fitchville, Connecticut; Lebanon, Connecticut; South Windham, Connecticut; Willimantic, Connecticut; South Coventry, Connecticut; Eaglesville, Connecticut; Mansfield, Connecticut; Morrow, Connecticut (Merrow is the right name, apparently); West Willington, Connecticut; Stafford, Connecticut; Monson, Massachusetts—as points to which the rates named in petitioner's Exhibit 654 apply to from New London, I find that the tariff names the rates from all of the stations I have enumerated to stations in the province of Quebec, and Vermont and New York other than those which I have enumerated. He has then taken the rates *applying from*, according to his tariff reference, and applied them from New London *to* those stations.

9787 Q. You have taken Government Exhibit 654 and covered the towns, beginning at the first town, Montville, down to Monson, and all of the other towns included between those two, have you not?—A. That is correct.

Q. And by an examination of Vermont Central G. F. D. 192 you now, on your oath, say that that tariff does not make a rate from New London to those towns between Montville and Monson, inclusive?—A. I am unable to find anything in the tariff that does.

Q. Now, take the towns on petitioner's Exhibit 654, from Monson to Brattleboro, inclusive, being all of the other towns excepting Burlington named on that exhibit?—A. I do not find any Massachusetts stations on page 3 of tariff G. F. D. 192, which is the page that names the rates from New London to the points named in the tariff. Going through the tariff to locate the stations, commencing at Palmer, Massachusetts, directly following Monson, and ending at Vernon, I find that Mr. Boltz has apparently made the same error that he made before, and has put in the column under the word "To" a list of stations from which the rates apply.

Mr. KELLOGG. There is not a single figure of the rates that compares with the sheets you have got, is there?—A. Well, he named it; that is all. I am explaining what I did.

Mr. KELLOGG. You have got the wrong tariff, evidently.

WITNESS. I got the tariff that he referred to.

Mr. KELLOGG. It may be a mistake in the number of the

9788 tariff, but you have evidently got the wrong tariff, because there is not a single rate that compares at all, is there?—A. Yes, sir; Burlington is in there.

Mr. ROSENTHAL. Burlington is in there. He has got Burlington right.

Mr. KELLOGG. That is an entirely different tariff.

Mr. ROSENTHAL. Out of the thirty-odd stations there he has Burlington right.

Mr. KELLOGG. You have the wrong tariff, that is all.

WITNESS. I have not got the wrong tariff, I will beg your pardon. I have got the tariff that Mr. Boltz refers to.

Mr. KELLOGG. It does not compare.

Mr. ROSENTHAL. If Mr. Boltz will furnish us any other tariff——

Mr. MILLER. He gives us the number of the tariff that he refers to.

Mr. ROSENTHAL. That he has referred to, except the one Mr. Felton has before us, why, we may modify our statement; but unless we get that from Mr. Boltz we will have to insist upon our objection to Exhibit 654. The agreement was in Washington——

Mr. KELLOGG. If there is any mistake in the number, we will have it corrected; but the number that you have got does not compare with the number that Boltz gave at all.

Mr. ROSENTHAL. The number that we have got compares in part with the number that Boltz gave. It is the same G. F. D. number, as Mr. Felton points out.

Mr. KELLOGG. That is true.

Mr. ROSENTHAL. But a different I. C. C. number.

9789 Mr. DURAND. And a different date.

Mr. KELLOGG. And a different date and different rates entirely; so it evidently is not the same tariff he is talking about.

Mr. ROSENTHAL. And it is the only thing we can find as the basis for Boltz's authority.

Mr. DURAND. He has made a mistake in his reference.

Mr. KELLOGG. Mr. Boltz will be here Monday morning. I should like to ask a question right there. The tariff that you were reading from, Mr. Felton——

Mr. ROSENTHAL. Why go further with that?

Mr. KELLOGG. Does not name a single rate named on Boltz's exhibit, does it?—A. I could not find that it did; no, sir, the tariff that Mr. Boltz refers to.

Mr. KELLOGG. It is an entirely different tariff, or else this statement has been made up out of whole cloth.

Mr. MILLER. I submit that is not fair.

WITNESS. Mr. Boltz quoted Central Vermont G. F. D. 192.

Mr. ROSENTHAL. If you want to take it that way, you may take it. Perhaps it is made up out of whole cloth. Let me take a few figures here, and I will show you that he has drawn certain percentage deductions that he either imagined or wilfully misrepresented.

Mr. KELLOGG. That is all right.

Mr. ROSENTHAL. We will take you at your own statement.

Mr. MILLER. We ask counsel to produce that statement.

Mr. KELLOGG. We will produce it, certainly.

Mr. DURAND. You mean the tariff referred to?

9790 Mr. ROSENTHAL. Yes, the tariff that Mr. Boltz refers to.

Mr. MILLER. Have you got it right here?

Mr. KELLOGG. No, we have not. We did not bring the entire files.

Mr. DURAND. Oh, I don't think so.

Mr. ROSENTHAL. Let us have the original of 654 again.

Mr. KELLOGG. We will get that for you Monday morning.

Q. Now, Mr. Felton, whether it is made up out of whole cloth or not remains to be seen as yet, but I have just promised to show that there is a willful omission which materially changes the percentage deduction. I call your attention to petitioner's Exhibit 654, and opposite Burlington; please state whether or not Mr. Boltz has omitted therefrom the rate from New London to Burlington—the L. C. L. rate?—A. He has omitted the L. C. L. rate.

Q. From New London to Burlington?—A. From New London to Burlington. He shows the carload rate, but not the less than carload rate.

Q. That appears upon the face of Exhibit 654, does it?—A. That omission is very evident from an inspection of that exhibit.

Mr. KELLOGG. The exhibit shows right on its face that it was intended to be omitted, does it not?

Mr. ROSENTHAL. Wait a minute. It was not intended to be omitted.

Mr. KELLOGG. Certainly it was.

WITNESS. It was omitted

9791 Mr. KELLOGG. It shows on its face that it was omitted, doesn't it?

Mr. ROSENTHAL. Certainly it shows on its face that it was omitted, and you find immediately below there on Exhibit 654 the words "Average rate," and under the column "L. C. L." 7.7, do you not?

WITNESS. That is true.

Q. Purporting to be the average rates from New London to the towns named on Exhibit 654?—A. That is correct.

Q. And in the last column there is shown 6.4, which purports to be the average carload rate from New London to the towns mentioned?—A. That is true.

Q. And below you find this statement: "Analysis of the above indicates the average difference in rates on oil in carloads and less is only 17 per cent," do you not?—A. That is true.

Q. What is the Burlington rate from New London?—A. Carloads?

Q. Less than car loads.—A. The tariff which Mr. Boltz refers to, G. F. D. 192, makes 40 cents per 100 pounds.

Q. That is the tariff which he refers to where?—A. Which he refers to on the first line of Exhibit 654, under the heading "Authority for the above rates."

Q. That makes the less than carload rate from New London to Burlington 40 cents a hundred, does it?—A. It makes it 40 cents.

Q. Have you figured the average difference in rates on oil in less than carload lots in the manner in which Boltz figured, in-

9792 serting the Burlington rate of 40 cents?—A. I have had it done. I did not go over the figures personally.

Q. And what do you find the percentage to be?—A. I found that the average on the carload was 6.4 according to Exhibit 654, and I found by adding the less than carload rate to Burlington, which certainly should have been added, to have made a——

Q. To have made the exhibit accurate?—A. To have arrived at the correct difference between less than carload and carload, made the average less than carload rate 8.85 instead of 7.7.

Q. And what does that make the average difference in rates on oil in carloads and less than carloads, figured in per cent?—A. Twenty-eight per cent, as against 17 per cent shown on Exhibit 654.

Q. So that if he had included the Burlington 40-cent rate there, it would have increased his percentage from 17 per cent to 28 per cent?—A. That is correct.

Mr. KELLOGG. I wish to ask a question.

Mr. ROSENTHAL. I shall object to your asking questions as to the manner in which the exhibit is made up. It is your exhibit.

Mr. KELLOGG. That is just what I am going to ask, just the manner in which it is made up.

Mr. ROSENTHAL. That is not my exhibit; it is your exhibit. I shall object to your cross-examining Mr. Felton at this time.

Mr. KELLOGG. I shall ask him a question, and he can refuse
9793 to answer.

Mr. ROSENTHAL. Very well.

By Mr. KELLOGG:

Q. Mr. Felton, if you leave out Burlington from both sides, take out the 12-cent rate and the 40-cent rate, and the percentage will be substantially as he gives it, will it not?—A. I don't know.

Q. You can figure it.—A. I could not in a moment.

Mr. ROSENTHAL. Figure it at your leisure, and answer when you get around to cross-examination.

Q. Do you decline to answer?—A. My examination of the document included the 12 cents in carloads. What might occur by leaving out something else or putting in something else is entirely another matter.

Q. But if you take out Burlington entirely, as to all the other places the comparison is substantially correct, isn't it?—A. I don't know, sir, without going over all those figures, and you will excuse me from doing that right now, won't you?

Q. You seemed to be perfectly willing to go over figures when Mr. Rosenthal asked you.—A. I go over the figures, of course, but you asked me to go over these figures, and add up figures, and make a computation and do it right here in a minute. I will do it to-night and answer you in the morning, if you want me to.

Mr. ROSENTHAL. When they get the correct authority upon which they have made up that exhibit, why, we will ask further questions concerning it.

WITNESS. I am very glad to accommodate you, Mr. Kellogg.

9794 Q. Do you ever ship in less than carload to Burlington?

Mr. ROSENTHAL. As I understand you, you will produce, if in existence, some tariff other than G. F. D. 192, as the authority upon which Mr. Boltz relied.

Mr. KELLOGG. We will produce the correct tariff as authority for this Exhibit 654.

Mr. ROSENTHAL. That is, you will produce Tariff G. F. D. No. 192, I. C. C. No. A–822?

Mr. KELLOGG. I didn't say that.

Mr. ROSENTHAL. That is the tariff that he refers to.

Mr. KELLOGG. Very well. We will produce the correct tariff on which this table was based. I can not guarantee that in writing that off one figure of 822 or 872 or 882 or 192 might not have been a mistake of the stenographer; but the tariff on which those rates were based will be produced, and if there is not any such tariff, it will be withdrawn. You can rely on that.

Mr. ROSENTHAL. Well, maybe it will be withdrawn.

Mr. KELLOGG. It is undoubtedly correct, because the tariff you have is not this tariff at all. Now, do you ship in less than carloads to Burlington from New London?

WITNESS. I don't know, sir. I could imagine very likely that we did.

Q. You could imagine most anything, but I asked you if you did do it, not what you imagined.

Mr. ROSENTHAL. He has told you he did not know.

A. I am answering your question the best I know.

Q. You have a very brilliant imagination. It is facts I am
9795 after.—A. No; I am not blessed with a brilliant imagination.

Q. Don't you know that Burlington is a very large distributing point for the Standard Oil?

Mr. ROSENTHAL. Now, wait a minute, Mr. Felton. I shall instruct you not to answer any further questions that he asks you on cross-examination at this time.

Q. You decline to answer, do you?

Mr. ROSENTHAL. In the first place, because counsel has no right to insult you, and secondly, because under the ruling of the examiner he has not any right to cross-examine you at this time.

A. I will have to stand on Mr. Rosenthal's advice, Mr. Kellogg.

Q. Is not Burlington a large distributing point?—A. I decline to answer.

Mr. ROSENTHAL. Wait a minute, Mr. Felton. I shall have to instruct you that I want to go on with you on direct examination now until I get through with you.

Q. You decline to answer?—A. I do, sir.

Mr. ROSENTHAL. The witness will be perfectly willing to answer it upon cross-examination.

Mr. KELLOGG. Certainly.

By Mr. ROSENTHAL:

Q. Will you please examine Government Exhibit 622 [handing paper to witness]? That exhibit was put in evidence by the Government while Mr. Schindler was on the stand at Washington. With respect to Government Exhibit 622 the witness Schindler testified on behalf of the Government that the rates thereon indicated
9796 between the points there indicated were the lowest combination of rates that he was able to make from an examination of any tariffs that he was able to find. Have you made an examination of the tariffs that were in existence during the time in question, for the purpose of determining the accuracy of Government Exhibit 622?—A. I made some examination myself, and I caused further examinations to be made by some of my assistants.

Q. And what do you find with respect to the accuracy of Government Exhibit 622? Do you find that those are the lowest combination of rates that can be made between those points?—A. They are not, or they were not at that time.

Q. Exhibit 622 gives certain tariffs as the basis for the rates therein named, does it not?—A. It does.

Q. And an examination of those tariffs will show the dates when those tariffs were operative, will it not?—A. That is correct.

Q. Now, taking the dates covered by those tariffs named by the Government on Exhibit 622, have you examined that situation for the purpose of ascertaining whether there are other tariffs in existence giving a lower combination of rates between the points named than does Government Exhibit 622?—A. I have.

Mr. KELLOGG. Do you mean now or then?

Mr. ROSENTHAL. Oh, then. I mean at the date mentioned, to wit, December 15, 1904, the date mentioned on Government Exhibit 622.

WITNESS. I have made such examination myself, and caused more complete and detailed examination to be made by my
9797 assistants.

Q. And have you put the result of that examination in the form of an exhibit?—A. I have caused it to be done; yes, sir.

(Paper marked "Defendants' Exhibit 127.")

Q. I show you defendants' Exhibit 127. Is that the exhibit that has been prepared in the manner which you have just indicated?—A. Yes, sir; it is.

Q. Do you take on defendants' Exhibit 127 the same towns as the Government has taken in its Exhibit 622?—A. I have just compared them, and find them to be the same.

Q. And do you give on defendants' Exhibit 127 the tariffs from which you obtained the correct rates?—A. I do.

Q. And those are the tariffs indicated in the note at the bottom of defendants' Exhibit 127?—A. That is correct.

Q. And you take the same points and the rates between the same points?—A. I did not quite get that.

Mr. MILLER. The same points of shipment and destination.

Q. The same points of shipment and destination.—A. From and to; yes, sir.

Q. Now, as an illustration: does Government Exhibit 622 purport to give the lowest rate on petroleum from Toledo to Cumberland Junction, Maine, as of December 15, 1904?—A. On its face it gives a rate.

Q. I asked you if it purported to give the lowest rate.—A. The exhibit in itself says nothing about the lowest rate.

Q. On its face it gives a rate?—A. It gives a rate.

Q. And add to that Mr. Schindler's testimony that it was the lowest combination of rates?—A. If he so testified, then
9798 this would indicate that the rates named on petitioner's Exhibit 622 were the lowest combination.

Q. What rate between Toledo and Cumberland Junction, Maine, does Government Exhibit 622 show?—A. Government Exhibit 622 shows a rate of 44 cents per 100 pounds from Toledo, Ohio, to Cumberland Junction, Maine.

Q. Now, assuming that Mr. Schindler testified that that was the lowest combination of rates between Toledo and Cumberland Junction, what do you say as to the fact in that regard?

Mr. KELLOGG. Now, I object to that unless he produces the tariff.

Mr. ROSENTHAL. We have given you the authority, and we will produce the tariff whenever you want it.

Mr. KELLOGG. I object to it as incompetent and irrelevant.

Q. What is the fact?—A. According to my understanding, the correct rate was 27 cents per 100 pounds.

Q. From Toledo to Cumberland Junction?—A. Yes, sir.

Q. And what is your authority for that?—A. Grand Trunk Tariff I. C. C. A-944.

Mr. KELLOGG. Is that the tariff you have been testifying to to-day?

WITNESS. Effective December 12, 1904.

Mr. KELLOGG. Let me look at it just a moment, and perhaps we will not object to it going in as it is.

Q. After the figure 27 under the head of "Correct rate Toledo" I find the letter "A." What does that refer to?—A. That refers to Grand Trunk Tariff I. C. C. A-944 effective December 12, 1904.

9799 Q. Now, take as a further illustration the rate from Cleveland, Ohio, to Cumberland Junction, Maine. What does Government Exhibit 622 show that rate to be?—A. Thirty-eight cents.

Q. What, as a matter of fact, was the lowest rate from Cleveland to Cumberland Junction at that time?

Mr. KELLOGG. That is objected to unless he produces the tariff, which is the best evidence.

A. Twenty-four cents.

Q. What is your authority for that?—A. After 24 you will find the letter "B." The letter "B" refers to B. & O. Tariff I. C. C. 4538, effective February 1, 1904.

Mr. KELLOGG. Have you that tariff here?

WITNESS. I do not think it is in the courtroom.

Mr. ROSENTHAL. I want to say this, Mr. Kellogg, that if you insist upon the production of the tariffs which we name as an authority for our rate, I shall likewise insist upon the production of the tariffs which you named as an authority in every exhibit which you put in, and there were hundreds of them. There were hundreds of them which went in in that way, on the understanding that we would have a right to check them up, and if we found an error, to call your attention to it. Now, if you invoke a different rule here with respect to us when we give you the authority on the exhibit and the tariff, you having access to the tariffs, and as ready access as we have, and undertake to invoke a different rule against us than we invoked against you, I shall object to every exhibit that you have put in under the same circumstances and for the same reason. All I
9800 want is the same rule applied to us as was applied to you in that regard; and wherever you check up here and find that we have erred with respect to any tariff which we have named as an authority, and wish to examine Mr. Felton further upon it, we will not have the slightest objection.

Mr. KELLOGG. Are you through.

Mr. ROSENTHAL. Yes.

Mr. KELLOGG. When we put in our testimony we had copies made of these exhibits, and furnished them to you, so that you could check them up. You refused to do that with us.

Mr. ROSENTHAL. Not at all. You may take the original.

Mr. KELLOGG. We can not, because it is in the stenographer's hands, and we are not entitled to do it.

Mr. ROSENTHAL. Why, you have all the original exhibits in your hands now.

Mr. KELLOGG. Not at all.

Mr. ROSENTHAL. I am calling for them from day to day, and it turns out here that the original exhibits, which at least should be——

Mr. KELLOGG. Our exhibits.

Mr. ROSENTHAL. Not at all—not your exhibits——

Mr. KELLOGG. Will you keep still until I get through?

Mr. ROSENTHAL. No.

Mr. KELLOGG. Well, go on and when you get through I will talk.

Mr. ROSENTHAL. The exhibits which you have in your possession; and I have been calling upon Mr. Chase for them—the original, marked "exhibits" in this case, which should be in the posses-
9801 sion of the official stenographer, but which turn up here in your possession.

Mr. KELLOGG. Not a bit of it, and you know it is not true.

Mr. ROSENTHAL. I know that they are in the possession of Mr. Chase, and that he is producing them, and that the stenographer yesterday said he did not have them, but that Mr. Durand did.

Mr. KELLOGG. I won't bandy words with you at all. I will address my remarks to the stenographer when you get through.

Mr. ROSENTHAL. Now, I simply wish to say, if that objection is insisted upon, I want the record to show that wherever you put in an exhibit, stating your tariff authority upon the exhibit without producing the original tariff, we shall likewise insist upon an objection to the introduction of those exhibits, upon the ground that they have not been properly proved.

Mr. KELLOGG. You have said that once. Now, are you through?

Mr. ROSENTHAL. Yes; I am through with that statement.

Mr. KELLOGG. Now, may I make a statement without being interrupted and insulted by you?

Mr. ROSENTHAL. You may, sir.

Mr. KELLOGG. Very well. I say you were given copies of all of our exhibits—that you refused to give us. We took the testimony in Washington, where the tariffs were, and we produced every tariff there asked for.

Mr. ROSENTHAL. Well, the record will show just what took place at that time.

Mr. KELLOGG. We produced every tariff asked for. If you would furnish us copies of your exhibits and put them in, the
9802 way we did, take the testimony and have the tariffs where we could get at them, there would be no objection.

Mr. ROSENTHAL. That is the only answer to that, is it?

Mr. KELLOGG. But you are throwing every obstacle in the way of having a copy to examine. We have not even a copy, unless we borrow the original from the stenographer. As to every one of our exhibits, with possibly a very few exceptions, but all of the important ones, you had copies furnished you at the time they were put in.

Mr. ROSENTHAL. Only as to a very few of them. As to most of your exhibits—as to the exhibits which came from us in the first instance, which were made up at your request, of course we retained copies of those—as to most of the exhibits which you yourself prepared, you will find from an examination of the record that as a matter of fact we did not get copies.

Mr. KELLOGG. Yes, you did.

Mr. ROSENTHAL. And whether that is so or not, you now have the originals which you are at perfect liberty to take, and we will use the copy which we have bound, in our bound briefs here as the basis of the witness's testimony. You may use those originals precisely as you would use copies.

Mr. KELLOGG. Go on with your testimony. I will enter my objections as I see fit.

Q. I direct your attention, Mr. Felton, in connection with this same exhibit, to the letters "E. G." If you will look under the head of "Oil City, Correct filed rate," what do the letters "E. G." refer to there?—A. The letter "E" refers to Erie Railway Tariff I. C. C. A–114.

9803 Q. As shown in the note opposite the letter "E" at the bottom?—A. As shown in the note opposite the letter "E" at the bottom.

Q. And "G" refers to what?—A. "G" refers to Boston and Maine Tariff I. C. C. 3198, effective April 16, 1903.

Q. In order to get that 35½-cent rate from Oil City to Auburn, Maine, you use the two tariffs here——A. Yes, sir.

Q. Erie I. C. C. A–114 and Boston and Maine I. C. C. 3198?—A. Yes, sir.

Q. And wherever there are two letters like that, the explanation is the same?—A. Yes, sir.

Q. Now, at the lower right hand of this exhibit I find the words "From Toledo to Boston, 27." What does that mean?—A. That is put down there for a handy reference in checking the through rate or the combination of rates, and that means, as in the case of the letters "E. G." that you just referred to, Tariff E, which shows as Erie I. C. C. A–114, makes a rate of 23½ cents from Oil City to Boston. Tariff G, B. and M. I. C. C. 3198, as is shown in the extreme right hand column of Exhibit 127, names a 12-cent rate from Boston to Auburn, Maine. The 23½ and the 12 make a through charge or a through rate of 35½ cents a hundred pounds as against the 39-cent rate shown in Government Exhibit 622.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 127.

Mr. KELLOGG. It is objected to as incompetent, as the tariffs are the best evidence. Now, I wish to ask him a question.

Mr. ROSENTHAL. About what?

9804 Mr. KELLOGG. About defendants' Exhibit 127.

By Mr. KELLOGG:

Q. What did you say your authority was for the Cleveland rate?—A. Cleveland to what point, Mr. Kellogg?

Q. To all these points.—A. Baltimore and Ohio Tariff I. C. C. 4538.

Q. Have you got it in town?—A. I don't know whether it is or not, sir.

Q. Does it name a rate from Cleveland to these points by itself?—A. It names a basis and refers to Fast Freight Line books that do name a rate.

Q. The same as this Grand Trunk tariff?—A. Practically on that basis; yes, sir.

Q. And the Fast Freight Line books exclude petroleum the same as the Grand Trunk?—A. Not in that case; no, sir.

Q. It does not?—A. No, sir.

Q. Where is your Fast Freight Book referred to here in this tariff—A. It is an Erie Despatch Fast Freight Book referred to in the tariff.

Q. Is it referred to on your Exhibit 127?—A. No; but it is referred to in the tariff and is thereby a part of I. C. C. 4538.

Mr. KELLOGG. Will you produce that B. and O. tariff, and the despatch book that you refer to as a basis for the Cleveland rate?

Mr. ROSENTHAL. Certainly.

Mr. KELLOGG. Well, when?

WITNESS. If we have them here, I can produce them Monday. If I have not got them here, I will get them.

9805 (Paper marked "Defendants' Exhibit 128.")

By Mr. ROSENTHAL:

Q. I show you defendants' Exhibit 128. Please state what that is.—A. Correction in rates from Government Exhibit 622, giving the lowest combination available from Oil City in the year 1904.

Q. And for the same date indicated in Government Exhibit 622?—A. The tariff references given in the body of this Exhibit 128 cover dates from 1899 to 1903.

Q. That is, cover dates when the tariffs became effective?—A. Cover dates when the tariffs became effective; yes, sir.

Q. Continuing in effect from that time on except where indicated?—A. I so understand; yes, sir.

Q. Now, some of the tariffs indicated as the reference from which you obtained these rates in defendants' Exhibit 128 are State tariffs, are they?—A. Some of them are; yes, sir.

Q. Can you indicate which are State tariffs?—A. Tariff C, Maine Central 172, effective August 18, 1899; was not filed with the Interstate Commerce Commission according to this statement until May 22, 1906, when it was filed under the number I. C. C. 1163.

Q. What others?—A. Maine Central Local Mileage Class Rate Tariff. That was filed with the Commission on October 15, 1906, under I. C. C. 1264.

Q. Any others?—A. Maine Central rate issue R.

Q. That is C, and then F, and then M?—A. C and F and M and N.

9806 Q. C, F, M, and N were State tariffs in 1904, were they?—A. C, F, M, and N were state tariffs in 1904.

Q. Not filed with the Interstate Commerce Commission?—A. That is correct according to the record as set forth here.

Q. Using those tariffs in connection with the other tariffs indicated on this exhibit, defendants' Exhibit 128, you get the rates thereon indicated, do you, as the through rates from Oil City to the points indicated?—A. Get the rates under the heading "Correct rate."

Q. In other words, this exhibit shows in some instances a combination of through and local rates in order to get the lowest rate?—A. Yes, sir.

Q. As I understood your testimony yesterday, if I remember it rightly, you then testified that that was the common practice until the issuance of this recent rule by the Interstate Commerce Commission?—A. I testified that it was quite a common practice.

Mr. KELLOGG. Do you mean for the Standard Oil?

Q. Well, what do you mean in that regard? Do you mean for the Standard Oil Company alone or for shippers generally?—A. I mean for shippers generally.

Mr. ROSENTHAL. Now, whenever you want enlightenment of that kind, Brother Kellogg, just interject and you will get it.

Q. And do you know whether those State tariffs indicated on defendants' Exhibit 128 were class tariffs?—A. I understand that some of them were class tariffs and some were oil tariffs. One of them seems to have been a local mileage class rate tariff, which was very proper to use.

Q. Well, we will have those tariffs in the course of a few
9807 days. I offer in evidence defendants' Exhibit 128.

By Mr. KELLOGG:

Q. I want to ask a question or two about it. In order to make up this combination of rates named in defendants' Exhibit 128 you have to use, during the time shown by Government Exhibit 622, those rates in the States not filed with the Interstate Commerce Commission?—A. In some cases, not in all.

Q. What cases not?—A. I called off the tariffs.

Mr. ROSENTHAL. The cases indicated, Mr. Kellogg, C. F. M. and N.

Q. Have you those tariffs?—A. I do not know whether they are here or not. I have some.

Q. Where do you keep your tariffs?—A. The tariffs are in my office.

Q. Where is your office?—A. New York.

Q. In New York. Was this made up from the tariffs in your office?—A. Yes, sir.

Mr. KELLOGG. I object to defendants' Exhibit 128. The tariffs are the best evidence. When you are ready to submit the tariffs with the exhibit we will examine them. Will you produce those tariffs Monday morning?

WITNESS. If they are here; yes, sir.

Mr. ROSENTHAL. Have you got Exhibit 623, Mr. Chase?

(Paper handed to Mr. Rosenthal.)

By Mr. ROSENTHAL:

Q. Government Exhibit 623 purports to show a rate from Toledo, Cleveland, and Oil City to various New England points
9808 on the New York, New Haven and Hartford road therein named, and the testimony of the Government witnesses in connection with that exhibit was to the effect that those were the lowest combination of rates that could be made between those points. Have you examined that exhibit?—A. I have examined it generally myself and caused it to be examined more in detail by my clerks.

Q. Have you made an examination of other tariffs than those named on Government Exhibit 623, for the purpose of showing whether there are other combinations of rates that might have been made at that time between those same points?—A. I have.

Q. I show you defendants' Exhibit 129. What is defendants' Exhibit 129?—A. It is a table showing corrections of the rates to points on the New York, New Haven and Hartford Railroad, as shown in petitioners' Exhibit 623.

Q. And the correct rates that you have given in each instance are rates that are made up from the tariffs indicated in the note on the bottom of defendants' Exhibit 129, are they?—A. That is correct.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 129.

Mr. KELLOGG. Same objection as to 128.

Mr. ROSENTHAL. Now, I would like Government Exhibit 624.

(Paper handed to Mr. Rosenthal.)

Q. Government Exhibit 624 purports to be a correct statement showing a comparison of published rates on petroleum and its
9809 products in carloads to points on the Central Vermont Railway with the Boston rate from Toledo, Cleveland, and Oil City to the points named in such exhibit. Have you examined that exhibit?—A. I have had that exhibit examined, and I have examined it myself.

Q. And the testimony is that that states the lowest combination of rates that could have been made at that time between the points thereon indicated. Will you please examine defendants' Exhibit 130 and state what that is?—A. It is a table showing correction of the rates to points on the Central Vermont Railway, as shown in petitioners' Exhibit 624.

Q. And your authority for the rate named in defendants' Exhibit 130 is the tariffs indicated in the notes A, B, C, D, E, F, and G at the bottom of the page of that exhibit. Is that right?—A. Yes, sir.

Mr. ROSENTHAL. Let me have petitioners' Exhibit 621.

(Paper handed to Mr. Rosenthal by Mr. Durand.)

Mr. KELLOGG. Did you offer Exhibit 130 in evidence?

Mr. ROSENTHAL. I now offer defendants' Exhibit 130 in evidence.

By Mr. KELLOGG:

Q. I would like to ask a question or two about that. Do you base the rates from Toledo on the Grand Trunk tariff that you testified to to-day?—A. Yes, sir.

Q. And the rates from Cleveland on tariffs indicated at the footnote?—A. Yes, sir.

Q. Now, I notice, for instance, take Williston. You make the rate from Cleveland 49 cents, don't you?

Mr. ROSENTHAL. Just a minute. There is only one Toledo
9810 rate that I find based exclusively on that Grand Trunk tariff, Mr. Felton. I wish you would examine the exhibit.

Mr. KELLOGG. It is all the same. A. Grand Trunk tariff.

WITNESS. It is the same one.

Mr. MARTYN. Which one are you talking about?

Mr. KELLOGG. Exhibit 130.

Q. Now, your rate from Toledo, as I understand you, was based on that Grand Trunk tariff?—A. That is the way the statement reads.

Q. That is correct, isn't it?—A. That is correct.

Q. Your rate from Cleveland is based on the tariffs named in the letters opposite the respective rates and noted in the footnote, is it?—A. That is true.

Q. B and E, are they?—A. B and E, whatever the letters are.

Q. Yes, whatever they are. Now, the Williston Vermont Central rate from Cleveland is 49 cents a hundred, is it?—A. That is what this combination makes; yes, sir.

Q. And from Toledo is 29 cents a hundred?—A. Toledo is 27 by an entirely different route.

Q. Twenty-seven, I would say, instead of 29.—A. By an entirely different route.

Q. Twenty-seven cents a hundred?—A. Yes, sir.

Q. Now, what is the rate from Cleveland to Toledo?—A. That is another combination.

Q. That is 9 cents, isn't it?—A. From where?

Q. From Cleveland to Toledo is 9 cents?—A. Yes; you can figure another combination.

9811 Q. Why didn't you put it in there, another combination, and ship from Cleveland to Toledo, and then over to Williston?—A. If I had had time I suppose I could have found a whole lot more.

Q. You didn't think of that?—A. Yes; I thought of that.

Q. That is all.—A. I thought of that. And you might be surprised to know that shipments go from Cleveland, of all kinds of stuff, into Canada, and perhaps away back into New England, via Toledo and Detroit and the Grand Trunk system; so that is not such a great joke after all.

By Mr. ROSENTHAL:

Q. You do not pretend, in the making up of defendants' Exhibit 130, as I understand, to have given all of the possible combinations of rates——A. Oh, no, sir.

Q. That you might have given?—A. No, sir.

Q. Nor all of those that you might possibly have given lower than the Government exhibit?—A. No, sir.

Q. In the preparation of this exhibit you were simply seeking to demonstrate the gross error into which the Government had fallen in putting in its exhibit?—A. That is correct.

Q. But you were not trying to show (because that would be an endless task) all the mistakes that they made?—A. Based on what I found, it would be quite a task.

Mr. KELLOGG. Now, Mr. Felton, except the one I pointed out to you, name a lower combination than you have got in this schedule 130.

WITNESS. Oh, I have nothing before me with which I could do that.

9812 Mr. KELLOGG. You can't do it, can you?

WITNESS. Not without consulting tariffs.

Mr. KELLOGG. You can't then, can you?

WITNESS. Yes; I think I could.

Mr. KELLOGG. Why haven't you done it, then?

WITNESS. You might ask me why I have not consulted every tariff in the United States. I think I have done pretty well.

(An adjournment was here taken until Monday, October 5, 1908, at 10.30 o'clock a. m.)

9813 ROOM 677, FEDERAL BUILDING, CHICAGO, ILL.,
Monday, October 5, 1908—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison; on behalf of the defendants, Mr. Moritz Rosenthal, Mr. John S. Miller, Mr. Chauncey W. Martyn.

Mr. KELLOGG. The petitioner withdraws its objections to defendants' Exhibits 120, 121, 121-A, 122, 123, 125, 126, 127, 128, 129, and 130, which objections were made on the ground that the tariffs were the best evidence, reserving the right, however, to check up the exhibits in examining Mr. Felton or any other witness on the accuracy thereof.

It is agreed that defendants' Exhibit 124, the Grand Trunk tariff I. C. C. No. A-944, shall be considered as introduced in evidence; but the National Despatch-Great Eastern Billing Instructions No. 9 may be considered in evidence, and such parts thereof read into the record as either party may deem material; and that the whole billing instructions may be produced at any hearing in this case and used with the same force and effect as if the same were introduced in evidence and printed in the record herein.

HENRY E. FELTON recalled.

9814-9815 WITNESS. May I make a few minor corrections?

Mr. KELLOGG. Yes.

Mr. ROSENTHAL. Yes; I think you had better make them as you go along, as you detect them from day to day.

Mr. KELLOGG. Yes; I think that would be the better plan.

WITNESS. Page 9677, in speaking about the independent refineries, instead of "There is a so-called independent refinery at every town or city," I should like to change that so it will read, "I understand there is a so-called independent refinery in practically every locality."

On page 9729, when I answered Mr. Rosenthal's question, I had not read what Mr. Schindler had said.

Mr. KELLOGG. What question, please?

WITNESS. "Instead of 65,000 pounds, as was testified to by Mr. Schindler."

Mr. KELLOGG. Hadn't you better scratch that out? I really don't know what you are talking about.

WITNESS. I will let that go, and you can bring that up in the cross-examination, and I will explain that.

Mr. KELLOGG. Go ahead.

WITNESS. Page 9746——

Mr. MILLER. Are you going to explain this on 9729?

Mr. KELLOGG. Make your explanation if you want to.

WITNESS. If we change it there it is going to change so much afterwards, I will be satisfied if the record just stands that I had not read Mr. Schindler's testimony, and I supposed the question covered it, and so did Mr. Rosenthal.

Mr. KELLOGG. All right.

WITNESS. Now, on page 9746, we were talking about that Red Line book, and an undue importance has been given to note 66. I would like to have the first answer on that page, if you please, read as follows: "I so understand, all being subject to rules shown in the book." Of course, the book must govern.

9816 Direct examination resumed by Mr. ROSENTHAL:

Mr. Felton, I want to direct your attention a little more specifically to the petroleum tariff of the Grand Trunk Railway system, I. C. C. No. A–944, effective December 12, 1904, with a view of having you explain somewhat more in detail your interpretation of that tariff in its relation to the tariff No. 9 of the National Despatch-Great Eastern Line. Directing your attention first to Grand Trunk commodity tariff I. C. C. No. A–944, will you point out where you find any reference on that tariff to the National Despatch-Great Eastern Line No. 9?—A. The tariff, after setting forth the names of the Grand Trunk Railway system and quite a number of other roads, continues (I am now reading from the tariff): "And connections as specified in the following agents' guides and billing lists." Among the guides and billing lists immediately following that notice I find "Nat.," standing for National Despatch-Great Eastern Line.

Q. Do you interpret that as referring to No. 9 of the National Despatch-Great Eastern Line, which I have before me, and which is marked "Defendants' Exhibit 124–B" for identification?—A. I do.

Q. And what are your reasons?—A. The document which you hand me reads: "National Despatch-Great Eastern Line. Shippers' and agents' guide No. 9, effective January 1, 1903."

Q. Have you found any other tariff of the National Despatch-Great Eastern Line subsequent to January 1, 1903, and prior
9817 to December 12, 1904, except defendants' Exhibit 124–B for identification?—A. I was unable to find any intervening National Despatch guide book.

Q. That being so, that would leave defendants' Exhibit 124–B for identification as the tariff of the National Despatch that was in force and effect on December 12, 1904?—A. That is the only conclusion I have been able to reach.

Q. Now, how do you interpret the words "Grand Trunk Railway system lines west of Detroit and St. Clair River and connections as specified in the following agents' guide and billing list," to wit, among others, 124–B for identification?—A. I interpret that they are to be used together.

Q. By virtue of what language?—A. As I previously stated, the tariff reads "Grand Trunk Railway system," etc., "in connection with;" then a list of railroads; then follows, "and connections as specified in the following agents' guides and billing lists."

Q. That is to say, it is a tariff that is issued in connection with these railroads that are named; that is to say, the Grand Trunk tariff is a tariff issued in connection with these railroads named upon its

face, beginning with the Atchison, Topeka and Santa Fe and ending with the West Shore railroad; and in addition to that it is also a tariff that is used in connection with the connections specified in these various Fast Freight Line tariffs, among others of which are National Despatch-Great Eastern Line No. 9, defendants' Exhibit 124–B for identification?—A. That is the way the tariff reads.

9818 Q. And is that the correct way to interpret it?—A. I can not conceive of any other interpretation.

Q. Now, on the second page of Grand Trunk tariff, the same being defendants' Exhibit 124–A for identification, I find at the very top of the second page this language: "From Toledo, Ohio, to trunk line territory:" "To" among others, for example, "Boston, Massachusetts; rates in cents per 100 pounds, 27." What does that mean?—A. That means that the rate from Toledo to Boston on petroleum products, as named on the first page of the tariff, is 27 cents per 100 pounds.

Q. Now, just below that I find this line: "For list of stations to which above rates apply, see various fast freight line billing instructions." What does that mean?—A. It means just exactly what it says.

Q. Well, as a freight tariff expert, how do you interpret that, and how would you determine the various fast freight line billing instructions that are there referred to?

Mr. KELLOGG. That is objected to, as the tariff shows on its face, and is the best evidence of the meaning of it.

A. I would first scrutinize the tariff itself, to see if it referred specifically to any so-called fast freight line billing instructions, and finding that it did, then I would study the document, that is, the fast freight line billing instructions, or the list of stations that would take Boston rates, if I was attempting to make Boston rates to any point in New England.

Q. In other words, this Grank Trunk Tariff 124–A not only makes a rate from Toledo, Ohio, to Boston of 27 cents, specifically naming Boston, but in addition to that extends the Boston rate of 27

9819 cents to lists of stations that are found in the various fast freight line billing instructions.

Mr. KELLOGG. That is objected to on the same ground.

Q. Is not that so?—A. It does, as plainly as it would be possible to print it on the face of a tariff. It reads: "For list of stations to which above rates apply, see various fast freight line billing instructions."

Q. So that in seeking for the list of stations to which the Boston rate applies, you interpret that tariff as giving you the clear right, based merely upon that portion of the tariff found on the top of page 2 thereof, to go to National Despatch-Great Eastern Line No. 9 for the purpose of getting the list of stations to which the Boston rate applies?—A. I do.

Mr. ROSENTHAL. I want petitioner's Exhibit 621, please.

(Paper produced and handed to Mr. Rosenthal.)

Q. Mr. Felton, have you analyzed and studied Government Exhibit 621?—A. I have.

Q. Are you able to say whether that is a correct statement of what it purports to be?—A. No, I have not checked——

Q. Or have you prepared a statement covering the same points in the same way that the Government has prepared its Exhibit 621?—A. I have caused such a statement to be prepared.

Q. I show you defendants' Exhibit 131. Please state what that is.—A. It reads "Boston and Maine Railroad. Table showing correction of the rates to points on the Boston and Maine Railroad as shown in petitioner's Exhibit 621."

Q. And your tariff authorities are the tariffs named at the bottom of that exhibit, are they?—A. That is the way the statement reads, and that I understand is correct.

9820 Q. And you have checked that up, as I understand you?—A. I have in a general way and in quite a close way gone over those figures; but I have not done all the clerical work.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 131.

By Mr. KELLOGG:

Q. Mr. Felton, the rate from Toledo, 27 cents, under the heading "Correct rate," is the Grand Trunk tariff introduced in evidence, I. C. C. No. 944, together with the National Despatch-Great Eastern billing instructions which you have been testifying about?—A. That is correct.

Q. And the B. and O. tariff which you used for making the rates from Cleveland 24 cents must be used in connection with the Erie Despatch billing instructions, the same as you have heretofore testified?—A. That is true.

By Mr. ROSENTHAL:

Q. Mr. Felton, it is contended by the Government in this case that discriminations have been made, favorable to the Standard, by the railroad companies, in connection with what is known as the Parkersburg-Marietta situation, there being a refinery owned by the Standard Oil Company at Parkersburg, and there being one or more refineries owned by non-Standard companies at Marietta, Ohio. You have examined that situation, have you?—A. I have.

Q. The Government's exhibits, in that connection, relate entirely, as I remember them, to shipments made into the South, or relate to rates of supposed shipments that might have been made into the South. Do you know what the basis of the Parkersburg south-

9821 ern rate is?—A. It depends upon the territory south, or the points to which the shipment might be going.

Q. Take the points on the L. and N. road from Parkersburg south, from Lexington, Kentucky. Do you remember the rate between Parkersburg and Lexington?—A. There was a rate for quite a long time—I don't recall just what years—there was a rate from Parkersburg to Lexington, Kentucky, of 9 cents per 100 pounds on traffic

destined beyond, south. That is not on the L. and N. That is on the Queen and Crescent.

Q. I show you B. and O. Railroad joint freight tariff, I. C. C. No. 3840, heretofore referred to in the testimony in this case. What does that tariff show the rate to have been from Parkersburg to Lexington?—A. Reading from the tariff, I find it applies on petroleum oil of various kinds, from Parkersburg, West Virginia, to Lexington, Kentucky, a rate of 9 cents per 100 pounds. It has a further provision as follows: "Applies only on shipments destined to southwestern territory or Mississippi Valley points." It became effective November 21, 1902.

Q. So that Parkersburg had a 9-cent rate from Parkersburg to Lexington under that tariff?—A. Under that tariff, on business destined to points beyond, south.

Mr. MILLER. South and southwest?

WITNESS. Yes, sir.

Q. Did Lexington take the same rate as Louisville?—A. As a rule, it did; yes, sir.

Q. What was the southern gateway for Parkersburg?—A. Why, I would recognize Lexington, Kentucky, as an authorized gateway from Parkersburg.

Q. Do you know what the gateway of Marietta into the
9822 South was? Was it Cincinnati?—A. In answering your question as to Parkersburg, I do not mean that Lexington was the only gateway——

Q. I understand.—A. A gateway.

Q. I understand that.—A. And now answering your question as to Marietta—Cincinnati was a gateway on business from Marietta.

Q. Do you know what the Cincinnati rate was from Marietta?—A. As I recall from memory, it was 12 cents per 100 pounds.

Q. Have you examined the tariffs for the purpose of determining whether there was a Marietta-Lexington rate?—A. No; I have not.

Q. At the same time that the Parkersburg-Lexington rate existed?—A. I do not recall that I have ever searched for a rate from Marietta to Lexington.

Q. The Government's exhibit found on page 148 of the petition, being, I think, Exhibit 586, shows a difference of 13 cents between the Parkersburg-Charleston rate and the Marietta-Charleston rate. Have you figured the rate from Parkersburg to Charleston on the basis of the Virginia City combination?—A. I have caused a statement to be prepared, or some figures to be made on that subject. I did not make them personally.

Q. And you have them before you?—A. I do not seem to have here the particular statement that I have in mind.

Mr. ROSENTHAL. I think I will reserve the Parkersburg-Marietta situation until Mr. Felton can go over his notes a little more carefully. I would like to have him cover the whole of the Par-
9823 kersburg-Marietta situation while he is at it. I will have to come back to the Parkersburg-Marietta situation when we have the data here.

Q. Mr. Felton, what are the cities that are known as the southern gateways located on the Ohio River, in so far as the Central Freight Association territory is concerned?—A. Cairo, Illinois, Paducah, Kentucky, Evansville, Indiana, Jeffersonville and Louisville——

Q. Jeffersonville is the Indiana town directly across the river from Louisville, is it not.—A. That is correct.

Q. Cincinnati?—A. And Cincinnati, Ohio.

Q. The four principal gateways are Cairo, Evansville, Jeffersonville or Louisville, and Cincinnati, are they not?—A. That is correct.

Q. What relation do those gateways bear to the matter of building up tariffs and making freight rates from the Central Freight Association to those points and to points beyond?—A. They are used very largely as basing points.

Q. What do you mean by that?—A. As a rule (to which there are some exceptions) rates are made to and from such gateways or basing points.

Q. What is the rule with respect to rates being the same from, say, Chicago, which is in the Central Freight Association territory, to these four principal gateways on all classes of commodities?—A. That is almost invariably true. That is, the rates are the same from Chicago to Evansville, Louisville, plus in some cases the bridge toll, and to Cincinnati. Cairo occupies a little different position
9824 with respect to rates from Chicago. The rates from Chicago to Cairo locally are very largely if not altogether dominated by the Illinois Central, and they do not always follow the Chicago-Evansville rates in making rates from Chicago to Cairo. In some cases, however, they make commodity rates from Chicago to Cairo the same as from Chicago to Evansville.

Q. Treating Cairo as a southern gateway, how do its rates compare, generally speaking, in connection with shipments that are to go beyond into the South, and particularly into the southeast of the Mississippi River, with the rates made to the other three gateways?—A. As I understand from long experience, in those cases the rates from Chicago to Cairo would be the same as from Chicago to Evansville.

Q. Or to Jeffersonville, or to Cincinnati?—A. Yes; as a rule they are the same.

Q. Are those four points equidistant from Chicago?—A. Very nearly; Cairo being the farthest point. Cairo, perhaps, is something like 75 miles farther than the others, generally speaking.

Q. I show you defendants' Exhibit 132. Will you please explain that exhibit, somewhat in detail, Mr. Felton, because it will then avoid the necessity of going as much into details with the other exhibits along this same line.—A. The exhibit is headed "Comparative oil and 5th class rates from Chicago (Whiting), Toledo, Cleveland, and Pittsburg, respectively, to Ohio River gateways."

Q. That is to say, you institute a comparison in this exhibit between the rate on petroleum from Chicago to these three Ohio

9825 River gateways, and between the rates from Chicago to these same gateways on other fifth-class commodities?—A. That is true.

Q. Why do you take fifth-class commodities?—A. I can not refer specifically to the document, but for the reason that the Government in its petition in this case makes reference in many cases to a comparison of rates between oil and fifth class.

Q. If oil takes a class rate at all in Central Freight Association territory, it takes a fifth-class rate, doesn't it?—A. Oil to-day takes 90 per cent of fifth class—that is, petroleum oil to-day is classed as 90 per cent of fifth class in railroad tariffs.

Q. And that is only recently?—A. That is only recently.

Q. Theretofore, when classified at all, it was classified in the fifth class, was it not?—A. No, sir; it was not. Prior to the 90 per cent basis, oil as a rule was taken on commodity tariffs.

Q. Now, the oil rate from Chicago to these three Ohio gateways is 11 cents, is it not?—A. That is correct; and if I may be permitted to say so right now, the tariff authorities for the rates named in this statement are given, covering all rates, both oil and fifth class.

Q. And you have given here the Association rates, have you—what are known as the Association rates?—A. As shown in these tariffs; yes, sir.

Q. I observe from that exhibit that the rate from Chicago to Evansville, Jeffersonville, and Cincinnati on petroleum is uni-
9826 formly 11 cents?—A. That is correct.

Q. Is the rate on fifth-class commodities generally also a uniform rate to those three points?—A. It is; a rate of 15 cents.

Q. And what is the relation between that uniformity of rate and the explanation which you gave us a few moments ago in connection with rates from Chicago to these three principal Ohio River gateways?—A. On account of the distance being practically the same, caused by the Ohio River running in a southwesterly direction. That is one reason, and these towns are all more or less competitive in their nature on traffic going into the South.

Q. Why do you in this exhibit compare the oil rates from Toledo to these three principal gateways with the fifth-class rates from Toledo to these three principal gateways? Will you please explain that? Let me put a leading question: The difference in the oil rate from Toledo to these three gateways ranges from 15 to 10 cents, does it not, as shown by this exhibit?—A. That is correct.

Q. Is there substantially, if not almost identically, the same range of difference between all other fifth-class commodities from Toledo to these three points?—A. I do not quite understand the question.

Q. While the rate between Chicago and these three gateways, on both oil and fifth-class commodities, seems to be uniform, the rates between Toledo and these three gateways on both oil and fifth-class commodities differ, depending upon distances, do they not?—A. That is correct, making this amendment to your question, that oil

9827 and fifth class are not the same from Chicago, but the oil rate and the fifth-class rate are the same to the three points named.

Q. What is the rate from Toledo to Evansville on oil?—A. Fifteen cents, according to this statement.

Q. From Toledo to Cincinnati?—A. Ten cents.

Q. That is a difference of 5 cents, is it not?—A. That is true.

Q. Between Toledo and those two gateways?—A. That is right.

Q. What is the fifth-class rate from Toledo to Evansville on commodities other than oil?—A. Fifth class, 18 cents.

Q. What is the fifth-class rate to Cincinnati on commodities other than oil?—A. Fifth class, 12½ cents.

Q. A difference of how much?—A. 5½ cents.

Q. So that there is substantially the same difference in the rate from Toledo to those three gateways on fifth-class commodities other than oil that there is from Toledo to these three gateways on oil rates?—A. That is substantially correct.

Q. Whereas from Chicago to these three gateways the rate is uniform on oil, and it is uniform on fifth-class commodities?—A. That is true.

Q. Now, the same situation, with differing figures, exists with respect to Cleveland and Pittsburg as exists with respect to Toledo—is not that true?—A. Very closely.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 132.

Q. Is there any relation, Mr. Felton, between this tariff situation just developed by you in connection wi.h defendants' Exhibit
9828 132 and the fact that there is a 10-cent rate from Chicago to Toledo, but a 12-cent rate from Toledo to Chicago, on petroleum? I mean, of course, to relate the question back to 1904, the time covered by the Government's testimony.—A. The tariffs indicate that there is or was.

Q. It was shown by the Government that the rate from Chicago to Toledo was 10 cents on petroleum, and that from Toledo to Chicago it was 12 cents. My question now is whether there is any relation between the manner of the making up of tariffs in connection with these Ohio gateways and that difference of 2 cents.—A. There is, or was.

Q. Please explain what the connection is there.—A. The rates from Chicago to the Ohio River gateways named on defendants' Exhibit 132 were not confined to the direct north and south roads, or roads running directly southeast from Chicago. Almost all of the railroads running directly east from Chicago, either by individual tariffs or by concurrence in the tariffs issued by C. E. Fulton of the Chicago and Ohio River Traffic Association, advertised and set forth the fact that they were in the market for Cincinnati traffic, and had tariffs covering such fact. For example, the Lake Shore and Michigan Southern Railroad and the Cincinnati, Hamilton and Dayton Railroad were both parties to the tariffs issued by C. E. Fulton, the roads being named in C. E. Fulton's issues, and in some cases by direct

tariff reference numbers, thus forming a line, for example, from Chicago via the L. S. and M. S. Railroad to Toledo, thence south over the C. H. and D. road to Cincinnati.

Q. By your C. E. Fulton tariff you mean the same tariff that
9829 Mr. Durand in his testimony referred to, do you—through freight rates No. 41, issued by C. E. Fulton, secretary, designated by I. C. C. No. 52, and subsequent issues of that tariff?—A. Yes; there was a long series of those tariffs. I could not say, of course, without having them before me, just during what dates the roads I have named participated or were parties thereto; but they were quite generally parties thereto during the period you have named.

Q. The rate from Chicago to Cincinnati, as I understand you, being 11 cents, and there being other lines crossing the main lines running from Chicago to Cincinnati extending into local territory, aside from these two principal points, created a rate situation that grew out of that basic rate of 11 cents from Chicago to Cincinnati?—A. The tariffs indicate that that is true.

Q. Now I show you defendants' Exhibit 133. Will you please explain what that is?—A. That exhibit is headed "Rates from Whiting to various intervening points between Whiting and Cincinnati via Toledo, Ohio." The tariff authorities are given thereon.

Mr. KELLOGG. Is not that apparent that they are, in every one of those, Mr. Felton?

WITNESS. Yes, sir.

Mr. KELLOGG. Where they are not given, let him call attention to them.

Q. Do you find from an examination of this exhibit substantially the same differences between the petroleum rates from Chicago to Dayton and the various other stations named on this exhibit as you do between fifth class commodities other than petroleum?—A. The differences between oil and fifth class, as shown on this statement, are quite uniformly the same, although there is a difference running between 2 and 4 cents.

Mr. ROSENTHAL. I offer defendants' Exhibit 133 in evidence.

9830 Q. I direct your attention to a number of towns named on this exhibit. How do you get from Chicago to Bryan, Ohio?—A. Bryan is a station on the Lake Shore road.

Q. Is Bryan a junction of the Lake Shore and the Cincinnati Northern? I will have that map here for you in a minute.—A. Suppose you wait a minute until I get it.

(A map was marked "Defendants' Exhibit 134.")

Q. What is defendants' Exhibit 134?—A. It is a map showing railroads and distances, Chicago to Cairo, and also Chicago to Evansville, Jeffersonville, Cincinnati, and other eastern points, showing not only the direct north and south and southeast roads, but roads reaching the junction points of such railroads by using direct eastbound roads out of Chicago.

Mr. ROSENTHAL. I offer defendants' Exhibit 134 in evidence.

Q. Now, to go back for a moment to Bryan. I observe that Bryan, Ohio, as shown on defendants' Exhibit 133, has a rate of 9 cents from Whiting. How is Bryan located with respect to Van Wert, Ohio?—A. All these answers will be from reading from the map. Bryan is located on the Lake Shore. The crossing of a north and south road shown hereon is the Cincinnati Northern. Van Wert is on the Cincinnati Northern, some distance south of Bryan, and is shown as being on the Pittsburg, Fort Wayne and Chicago Railroad, the junction of the Cincinnati Northern.

Q. Do you know what the Whiting-Van Wert rate was?—A. The rate on oil from Whiting to Van Wert I do not know without the tariff. This statement does not show it.

Q. It was 9 cents, as a matter of fact.

(Paper handed witness.)

9831 WITNESS. The rate to Van Wert as shown on another statement, which I assume will be an exhibit later on, is 9 cents per 100 pounds.

Q. From Whiting?—A. From Whiting.

Q. What relation is there between the rate from Whiting to Bryan of 9 cents and the rate from Whiting to Van Wert of 9 cents?—A. If the Lake Shore road wished to participate in traffic from Whiting to Van Wert at 9 cents per 100 pounds, it must necessarily, under the long and short haul clause of the interstate-commerce law, make not more than 9 cents to Bryan.

Q. Because Bryan would be——A. Would be intermediate.

Q. Would be intermediate on the Lake Shore between Whiting and Van Wert?—A. Via the Lake Shore and the Cincinnati Northern.

Q. Where is Kendallville located?—A. Kendallville is shown on the map as being the junction point of the Lake Shore and Michigan Southern and the Grand Rapids and Indianapolis Railway.

Q. The oil rate from Whiting to Kendallville seems to have been 8 cents.—A. That is correct.

Q. Do you know what it was to Fort Wayne, Indiana?—A. The oil rate to Fort Wayne, as shown on the second statement that I have, and not on Exhibit 133, from Whiting is 8 cents per 100 pounds.

Q. Fort Wayne is located on the main line of the Pennsylvania, is it not?—A. That is correct—of the Pittsburg, Fort Wayne and Chicago.

Q. What relation is there, if any, between the 8-cent rate from Whiting to Fort Wayne and the 8-cent rate from Whiting to
9832 Kendallville?—A. If the Lake Shore road desired to participate in Fort Wayne traffic via Kendallville and the G. R. and I., which is a competing route, it necessarily, for reasons I have already given in regard to the law, could not make a higher rate to Kendallville than the rate to Fort Wayne.

Q. So that if the Lake Shore wished to get into Fort Wayne—I mean by that, if it wished to get any Fort Wayne traffic——A. Over the G. R. and I.

Q. Over its line that ran into Fort Wayne——A. Well, there was another line in there.

Q. It would have, in order to compete with the Pennsylvania, to make its rate 8 cents to Fort Wayne?—A. That is correct.

Q. And on all points between Whiting and Fort Wayne, therefore, on the Lake Shore the rate of necessity could not exceed 8 cents?—A. That is true.

Q. And in that way we account for the Kendallville rate of 8 cents?—A. That is correct.

Q. What is the junction of the Lake Shore at La Porte—the Lake Erie and Western?—A. The Lake Erie and Western as shown hereon.

Q. Where is Plymouth, Indiana, with respect to La Porte?—A. Plymouth is some distance southeast of La Porte.

Q. Located on the Pennsylvania?—A. On the Pittsburg, Fort Wayne and Chicago Railroad.

Q. Which is a division of the Pennsylvania?—A. That is correct.

Q. What was the rate between Whiting and Plymouth on the Pennsylvania?—A. The rate from Whiting to Plymouth on the Pennsylvania, as shown on the statement which I understand
9833 you are later to offer in evidence, is 4½ cents per 100 pounds.

Q. And what is the relation between the Whiting-Plymouth rate and the Whiting-La Porte rate?—A. While Whiting, La Porte, and Plymouth are all in Indiana, the roads carried out the same idea and applied the competing rate beyond to intermediate points. That would make the rate to La Porte 4½ cents. They could not consistently charge a higher rate to La Porte than they charged to Plymouth.

Q. What line of road is Michigan City on?—A. Michigan Central and Lake Erie and Western.

Q. And what was its rate via the Michigan Central from Whiting?—A. I think that is shown on another sheet. Have you got that, Mr. Martyn?

Mr. ROSENTHAL. Michigan Central I. C. C. 2233.

Mr. MARTYN. No; I don't think I have.

Mr. ROSENTHAL. Four and one-half cents.

WITNESS. It does not appear here. I understand it is 4½ cents, but I would like the authority for it.

Q. Assuming it was 4½ cents, if you please, as shown by Michigan Central I. C. C. 2233, of April 11, 1905, is there any relation between that rate and the La Porte rate?—A. They are all connected for the reasons I have previously given. The Michigan Central Railroad working from Whiting through Michigan City to La Porte would not, naturally, make a higher rate to Michigan City than was made to La Porte.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibits 132, 133, and 134.

Q. I show you defendants' Exhibit 135. Please explain that
9834 exhibit, what it is, what purpose it serves with respect to the

issues that are involved here.—A. It is a statement of rates, both oil and fifth class, in cents per hundredweight, over direct east and west trunk lines from Chicago (Whiting) to points in Central Freight Association territory, and how such rates were met over indirect routes by other east and west roads in connection with various north and south roads, thus showing the effect of the rate from Chicago (Whiting) to Ohio River crossings upon east-bound rates from Chicago (Whiting) into this territory.

Q. Do you find from an examination of that exhibit the Cincinnati rate of 11 cents was met by roads that reached Cincinnati by a circuituous route, such as the Cincinnati, Hamilton and Dayton by way of Detroit?—A. Yes. This statement shows, according to the tariff authorities shown thereon, as I understand them, that the 11-cent rate made by the direct line Chicago to Cincinnati was met by the Michigan Central, running up through Michigan and going to Detroit and down to Toledo, and thence over the C., H. and D. road to Cincinnati.

Q. Was that true of fifth-class commodities generally by that route?—A. It was true specifically of oil by a commodity petroleum tariff, and for quite a long period, the details of which I could not give without the file of so-called Fulton's rates, the Michigan Central road was a party to the rates of the Chicago and Ohio River Traffic Association, and during such period applied a 15-cent rate via the Michigan Central, Detroit, Toledo, C., H. and D. to Cincinnati from Chicago.

9835 Q. Have you any idea what the distance would be via that route?—A. The distance shown on defendants' Exhibit 133, via the Lake Shore and Michigan Southern, Toledo and C., H. and D., is 429 miles. The distance via the Michigan Central, Detroit and Toledo would be considerably more.

Q. About 80 odd miles more, wouldn't it?—A. It is 65 miles, as I recall it, from Detroit to Toledo; there would be that difference, and perhaps 20 miles more running through Michigan. Add 85 miles to it. On that basis it would make the distance from Chicago to Cincinnati, via the Michigan Central, Detroit, Toledo and C., H. and D. about 500 miles.

Q. As against a direct route of ——A. As against a direct route of 298.

Q. But in both instances you find the rates the same?—A. According to the data from which I have testified, and am referring to the time that the Michigan Central was a party to C. E. Fulton's tariffs.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 135.

Q. So that the Lake Shore and the Michigan Central had rates from Chicago to Cincinnati by way of Toledo and by way of Detroit, as I understand you, and carried freight, not only petroleum, but fifth-class freight, by those routes?—A. They were parties to tariffs naming Cincinnati rates via those routes.

Mr. KELLOGG. Do you claim they carried any freight that way?

WITNESS. I could not say of course, Mr. Kellogg, the amount
9836 of tonnage they carried. If you will allow me to answer from memory I will say that away back prior to the time that I was connected with the C. and E. I. road, the Lake Shore—I was with them for a while—we did take business out of Chicago via the Lake Shore road and Toledo and the C., H. and D. to Cincinnati, most positively; but if you ask me what amount of traffic they are hauling now, of course I could not say without making inquiry of the Lake Shore people. But I remember distinctly handling business even when I was a petty clerk for the Lake Shore road, years ago.

Q. So that you not only remember that they handled business, but you know that they participated in the making up of those tariffs and were parties to the tariffs?—A. I do not recall the tariff situation away back there, but I remember distinctly that we handled Cincinnati business via Toledo.

Q. With an 11-cent rate from Chicago to Cincinnati, what do you say as to whether a 10-cent rate was reasonable from Chicago to Toledo?—A. I should say it was reasonable.

Q. It could not under any circumstances be more than 11 cents, could it, from Chicago to Toledo?—A. Not under the interstate commerce law.

Q. How far is Toledo from Cincinnati?—A. About 263 miles, as I recall it.

Q. And how far is Toledo from Whiting?—A. I think it is about the same distance, 265 miles; something like that.

Q. So, petroleum was carried on an 11-cent rate, or could have been carried on an 11-cent rate, from Chicago to Cincinnati by way of Toledo, while the rate was 10 cents from Chicago or Whiting to Toledo?—A. The tariffs so indicate.

Q. Do you remember what the rate was at that same time
9837 from Toledo to Evansville?—A. The rate on oil from Toledo to Evansville, as shown on defendants' Exhibit 132, was 15 cents per 100 pounds.

Q. What is the distance between those two points?—A. Three hundred and eighty-six miles as shown on this exhibit.

Q. Has that any relation to the 12-cent rate from Toledo to Whiting? That is to say, assuming that the roads could charge a 15-cent rate from Toledo to Evansville by way of Chicago, was a 12-cent rate under such circumstances a fair rate from Toledo to Whiting?—A. I should say that 12 cents was a fair rate from Toledo to Chicago as against a 15-cent rate from Toledo to Evansville.

Q. And under such circumstances it was possible for the railroad company to make a 12-cent rate from Toledo to Whiting or Chicago, while with an 11-cent rate from Chicago to Cincinnati via Toledo it would have been impossible for the roads to have made a 12-cent rate from Chicago or Whiting to Toledo? Is that not true?—A. That is true. They could not have done so and complied with the interstate commerce law. It would have been contrary to the long and short haul clause.

Q. The Government offered in evidence a table showing the rates per ton per mile from Rochester to divers points, comparing those rates with rates from other points where independent refineries were located. Have you caused to be prepared a table of rates made up in the same way that the Government made up its table, showing the rates from Rochester to various other competitive points than those named in the Government tables?—A. I have.

9838 Q. I show you defendants' Exhibit 136. That is correctly made up, is it?—A. I gave instructions to have a table of that kind very carefully prepared, carried out.

Q. And this was prepared under such instructions and under your direction?—A. That is true.

Mr. ROSENTHAL. I offer defendants' Exhibit 136 in evidence.

Q. Now, referring to defendants' Exhibit 136, you have selected Bradford, Wellsville, Struthers, Titusville, Rochester, and Pittsburg as a basis of comparison in connection with the rates to Cincinnati and Louisville and Evansville. Why were those towns selected by you instead of the towns taken by the Government in its exhibit, which is printed on page 156 of the petition, namely, Whiting, Toledo, Cleveland, Pittsburg, Oil City, and Rochester?—A. I thought that so long as a comparison was made between Rochester, Oil City, Pittsburg——

Q. Oil City and Pittsburg being points where there were so-called independent refineries?—A. Yes—Rochester being a so-called Standard point, that the table perhaps would be a little fairer if I made the comparison with other so-called independent points in that general locality.

Mr. MILLER. In the locality of Rochester?

WITNESS. Yes, in the locality of Rochester.

Q. That is to say, the Government in connection with this exhibit which it prints on page 156 of its petition, has selected a few towns most favorable to its position and remote from Rochester, and have omitted towns like Bradford and Wellsville, independent

9839 shipping points within the immediate vicinity of Rochester? That is true, is it not?—A. Yes. It seemed to me that it would be fairer from all points of view to take the independent refineries in the Rochester district so-called, or the Rochester neighborhood.

Q. Now, the Government in that exhibit, for example, institutes a comparison between Rochester and Toledo and Cleveland.

Mr. KELLOGG. And Whiting also. We put in Whiting.

Mr. ROSENTHAL. I understand. Between Rochester, Toledo, and Cleveland.

Q. You take, however, the independent shipping points within the immediate vicinity of Rochester, located in northern Pennsylvania, and institute a comparison there, do you not?—A. I do.

Q. And in that way you show that the rate per ton per mile from Rochester to Cincinnati, Louisville, and Evansville, they being the three towns selected by the Government in its exhibit, as set out on

page 156 of the petition, are substantially the same as the rates per ton per mile from Bradford, Wellsville, Struthers, and Titusville, do you not?—A. My answer is yes, with the understanding that the same means substantially that in some instances the rate per ton per mile from the independent refineries is a little less and in some instances a little more.

Mr. MILLER. Than the Rochester rate.

WITNESS. Yes, sir. And with this further answer: That I was unable to find a rate from Rochester to Evansville.

Q. For example, to illustrate the point of this exhibit, among
9840 other things, the rate per ton per mile from Wellsville, which is an independent refinery point, to Cincinnati was how much?—A. 5.6 mills.

Q. And the distance between Wellsville and Cincinnati was how much?—A. Five hundred and fourteen miles.

Q. The rate per ton per mile from Rochester to Cincinnati was how much?—A. Six and one-half mills.

Q. And the distance was how much?—A. Four hundred and ninety-five miles. I will answer this way: From Wellsville it was 5.6 mills and from Rochester 6½ mills.

Q. That rate per ton means rate per ton per mile, does it not?—A. It does.

Mr. ROSENTHAL. I think that should be inserted in the exhibit, per mile.

Mr. KELLOGG. All right.

Mr. ROSENTHAL. Mr. Durand, will you be good enough to put it in?

(A recess was here taken until 2 o'clock p. m., at which time the witness was recalled and his direct examination resumed.)

Q. I show you defendants' Exhibit 137, purporting to be a rule of the Chicago and Ohio River committee of the Central Freight Association. From what source did you obtain that rule?—A. I obtained that from the book of rules of the Central Traffic Association.

Q. I hold in my hand what purports to be a printed copy of the "Proceedings of meetings of the Central Freight Association and of Circulars No. 406 to No. 916, inclusive," printed under date of
9841 1897. Is that the book from which you obtained that rule?—A. It is.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 137, which is an exact copy of the rule taken from that book, and will put in the book if the Government wishes it.

Mr. KELLOGG. You need not put in the book. Just give us the date of the rule, when adopted, and the page.

WITNESS. That rule is taken from page 104 of volume labeled "Proceedings of Meetings of the Central Freight Association, 1897." The date shown on page 104 is March 9 and 10, 1897.

Q. What do you understand that rule to mean.

Mr. KELLOGG. That is objected to. The rule is the best evidence.

A. I understand that rule means that the Chicago and Ohio River committee of the Central Freight Association was the dominating power in the matter of making rates from Chicago to points west of the line designated or shown in that exhibit; that the roads running east of that line, in making rates to the Ohio River or other points, recognized the Chicago and Ohio River committee's tariff as the standard by which their rates must be checked in.

Q. What do you mean by the standard by which their rates must be checked in?—A. In making rates from Chicago to points east of the line shown, in checking in rates to points in Indiana or Ohio, if they came in contact with the rate shown by the Ohio River committee they would have to recognize those rates as dominating factors.

Mr. MILLER. For intermediate points.

9842 WITNESS. For Ohio River crossings or intermediate points. In other words, if the Chicago and Ohio River committee made a given rate from Chicago to Cincinnati, that fixed that rate from Chicago to Cincinnati.

Q. Referring again to defendants' Exhibit 136, being "Table of rates from Rochester and various competitive points to Ohio River crossings," what do you mean by the phrase "various competitive points?"—A. I mean that this exhibit shows points competitive with Rochester and the idea that Rochester is a defendant companies' point while the others are not.

Q. That is, Bradford, Wellsville, Struthers, Titusville, and Pittsburg are all shipping points where are located independent refineries?—A. Independent refineries.

Q. And you have instituted a comparison in showing the rate per ton per mile of fifth-class commodities and of oil?—A. That is true.

Q. Both the rate and the rate per ton per mile between Rochester and those points therein named?—A. That is true; and then, to more particularly answer your question: At Pittsburg there was a defendant company refinery as well as independent shippers.

Q. The rate given here, for example, Bradford to Cincinnati, 453 miles, "18" under fifth class, means 18 cents per 100 pounds?—A. That is correct.

Q. And "14" under oil rate means 14 cents per 100 pounds?—A. That is true.

Q. And the letters opposite the figures are the tariff authorities indicated at the bottom of the exhibit?—A. Yes, sir.

9843 Q. So that the rate per ton per mile from Rochester to Cincinnati is 65/100 of a cent, and from Bradford to Cincinnati is 62/100 of a cent?—A. That is correct.

Q. And from Wellsville 56/100 of a cent?—A. That is true.

Q. So from Bradford and Wellsville, two competitive point omitted by the Government in their exhibit, but lying within the same general freight-making territory as Rochester, the rate per ton per mile is considerably lower than from Rochester?—A. That is true.

Q. And then in the same way you show the rates from Rochester and these other towns to Louisville and to Evansville?—A. I have

no rate on oil from Rochester to Evansville, nor from Wellsville to Evansville.

Mr. KELLOGG. There is from Rochester.

WITNESS. I do not know where you got it. We could not seem to locate the tariff on it.

Mr. MARTYN. Mr. Schindler testified that the table was correct except as to the rate from Rochester, and he could not find that.

WITNESS. I could not find it.

Mr. KELLOGG. To Evansville?

WITNESS. No, sir.

Q. Where you have blanks in this exhibit it means that you could not find any rate at all?—A. That is correct. It shows that Bradford had a rate to Evansville, but Rochester did not.

Q. Bradford had a rate to Evansville of 67/100 of a cent per ton per mile?—A. That is correct.

9844 Q. And Rochester had no rate at all?—A. I was unable to locate any rate from Rochester to Evansville.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 136.

By Mr. KELLOGG:

Q. Mr. Felton, you several times spoke about the table the Government introduced. Do you mean the table on page 156 of the bill of complaint?

Mr. ROSENTHAL. Wait a minute, and I will give you the page; page 155, and the table on page 156—that is right.

Q. 155 and 156, then, you mean?—A. I did not consider——

Mr. ROSENTHAL. I think I referred in some of my questions——

WITNESS. I had page 156 in mind when I had this table prepared.

Q. That is, you made up your 136 to compare with the Government's table on page 156 of the bill of complaint?—A. That is true.

Q. Didn't you notice that Government Exhibit 156, that is, page 156 of the bill of complaint, was made as a comparison between Whiting on the one side and Toledo, Cleveland, Pittsburg, Oil City, and Rochester on the other?—A. I did.

Q. Why didn't you include Whiting in yours?—A. Because, so far as this exhibit is concerned, this was made particularly to show that so far as Cincinnati, Louisville, and Evansville were concerned, defendant company competitors had about as low a rate per ton per mile from the same general district as from Rochester and Pittsburg. So I arbitrarily eliminated the other points in order to make this comparison.

9845 Q. Now, wait a minute. Toledo, Cleveland, Pittsburg, Oil City, and Rochester (with the exception of Rochester) are all independent points, aren't they, as well as some of them Standard?—A. That is true.

Q. And Oil City and Pittsburg are fairly representative western Pennsylvania points, aren't they?—A. Oil City and Pittsburg; yes, sir.

Q. So that the Government took Whiting on the one side and Toledo, Cleveland, Pittsburg, Oil City, and Rochester on the other.

Don't you think that your table ought to show the rates from Whiting?—A. No; I don't think——

Mr. ROSENTHAL. You show it.

Q. Now, compared with Whiting——A. I do not question your figures, but I think that when you put in an independent concern from Toledo as against Cleveland or Whiting, if you please, you should have gone further into the independent question in the oil regions.

Q. Why?—A. Because it would not be fair, in my opinion, to compare Oil City with Rochester when Wellsville and Bradford lie between Oil City and Rochester.

Q. But we were comparing Oil City with Whiting.

Mr. ROSENTHAL. Not at all.

Mr. KELLOGG. Certainly we were.

Mr. ROSENTHAL. In your table on page 156 of the petitioner's complaint you were comparing Whiting, Toledo, Cleveland, Pittsburg, Oil City, and Rochester. Now we add to that comparison (and that is all we pretend to do by this table), Bradford, Wellsville,
9846 Struthers, and Titusville, which are also important independent shipping points, and we say that your table is unfair because you omit those four large independent shipping points. We do not question the verity of your table as far as it goes, but we say it does not go far enough, that is all.

Mr. KELLOGG. You repeated Pittsburg?

Mr. ROSENTHAL. We repeated Pittsburg, yes; because that comes from that Pennsylvania territory.

Q. The rate from Whiting to Evansville is lower per ton per mile than any of them, isn't it?—A. As shown on your exhibit, as shown on your petition, yes.

Q. That is correct, isn't it?—A. I do not question it, but I have not figured it.

Mr. KELLOGG. In other words, it is 57/100 of a cent per ton per mile.

By Mr. ROSENTHAL:

Q. Now, in addition to omitting these four strong independent points in the Government's exhibit, the Government takes points in different rate-making territories, does it not, and institutes a comparison; and what you have attempted to do, in addition to what I have already stated here by this exhibit, is to show that when you select Rochester, Bradford, Titusville, Wellsville, and Struthers, which all lie in close proximity to each other, and which are all within the same rate-making territory, that in that instance Rochester, the Standard shipping point, is, if anything, at a disadvantage as compared to those four independent shipping points?—A. That is correct.

Mr. KELLOGG. Well, Whiting is competitive with those places, for territory south of the Ohio River, isn't it?

9847 Mr. ROSENTHAL. We will get into that in a little while, Mr. Kellogg.

Mr. KELLOGG. Isn't it?
WITNESS. Whiting?
Mr. KELLOGG. Yes.
WITNESS. Yes, sir.
Mr. KELLOGG. That is what I thought.
Mr. ROSENTHAL. Within limits; that is, with certain limitations which we will develop hereafter.

Q. Mr. Felton, do you know of any general increase on westbound rates that was made in Central Freight Association territory about the year 1900?—A. I think it was on January 1, 1900, there was quite a general advance made on commodity rates. What I mean is a general advance on all commodities, and applying more specifically to commodity tariffs; in fact, I understand it was entirely commodity tariffs, in Central Freight Association territory.

Q. That is to say, there was a general advance in westbound rates on all commodities within that territory at that time?—A. That is true.

Q. And included in "all commodities" was oil?—A. That is true—to and from points in Central Freight Association territory.

Q. Do you know whether the Chicago-St. Louis or Chicago-East St. Louis rates were increased at the same time?—A. They were not advanced at that time.

Q. And was that also true of oil rates between Chicago and St. Louis or East St. Louis?—A. There was no change in oil
9848 rates from Chicago to points in Illinois at that time.

Q. No increase, then, or change in either class or commodity rates, Chicago to St. Louis—no general increase?—A. That is true.

Q. You have already stated that the rate from Chicago to Cairo on petroleum was 11 cents, and that the rate from Chicago to the other three Ohio gateways, namely, Evansville, Jeffersonville, and Cincinnati, was also 11 cents. Is there or was there any relation between the Chicago-Cairo rate and the Chicago-Toledo rate, or between the Chicago-Cairo-Evansville-Cincinnati-Jeffersonville rate and the Chicago-Toledo rate?—A. You are speaking of the rate on oil?

Q. Yes.—A. The rate on oil from Chicago to the Ohio River practically fixed the rate from Chicago to Toledo.

Q. How?—A. Because the roads running directly east from Chicago operated through Toledo to the Ohio River at the same rate, necessarily.

Q. That is, at the 11-cent rate?—A. At the 11-cent rate. Therefor, the rate from Chicago to Toledo could not be more than 11, and the roads would naturally get as close to 11 as they could, bearing in mind the rates that would be applied in scaling back between Cincinnati and Toledo.

Q. When you say that they would get as close to 11 cents as they could, from Chicago to Toledo, you mean by that that they would naturally get as high a rate, within 11 cents, as it was possible for them to get?—A. That is correct.

9849 Q. You have already told us about a rate made on the Michigan Central and the Cincinnati, Hamilton & Dayton by way of Detroit, of 11 cents from Chicago to Cincinnati. By the way, does it frequently happen that you get a rate over one combination of roads that may in miles be again as far as over another combination of roads, at the same over the longer route as exists over the shorter route?—A. That is not uncommon at all.

Q. Is it true that that is not uncommon because it frequently happens that that is the only way that the combination of roads making up the longer route have any chance of getting the business at the terminal point at all?—A. That is true.

Q. So that there might, if you please, be a rate from Chicago to Cincinnati of 11 cents over one combination of roads, the distance being four or five hundred miles, and at 11 cents over another combination of roads, the distance being only 290 miles?—A. That is true, the long route meeting the short route rate.

Q. And that would be a very striking illustration, that the cost per ton per mile over one route would be twice as high as the cost per ton per mile over another route?—A. That is correct.

Q. Do you know from your experience as general freight agent of the Lake Shore, and your experience in this western freight situation generally, extending back over many years, whether the rate from Chicago to Detroit has been the same as from Chicago to Toledo?—A. Always.

9850 Q. On all commodities?—A. On all commodities.

Q. So that having a 10-cent oil rate from Chicago to Toledo would, by virtue of the application of that principle, give you a 10-cent rate from Chicago to Detroit?—A. That is correct. The Lake Shore made rates from Chicago to Detroit through Toledo, and the Michigan Central made rates, Chicago to Toledo through Detroit; and necessarily they were always the same.

Mr. KELLOGG. They are both owned by one company, too.

WITNESS. I understand they are both under one management now. I do not know what the ownership was in the old days; but the Pere Marquette came along there with the same rates too, I understand.

Q. And the Wabash?—A. The Wabash.

Q. The Wabash runs from here to Detroit and Toledo, doesn't it?—A. Oh, there are half a dozen lines that make Toledo rates out of Chicago.

Q. And the Grand Trunk?—A. The Grand Trunk would always make to Detroit the same rates that were made to Toledo.

Q. So that you have the Chicago-Toledo rates the same as the Chicago-Detroit rates, not only over these two New York Central lines but over half a dozen other lines?—A. Necessarily so, to get the business.

Q. Having a 10-cent rate from Chicago to Toledo by way of Detroit, if you please, would necessarily give you at least a 10-cent rate from Chicago on the Michigan Central to points west of Detroit and east of Chicago, would it not?—A. It would not be higher than that.

Q. Perhaps it is more accurately stated by saying that it
9851 would necessarily give you a rate not in excess of 10 cents?—A. That is correct, and more elegantly stated.

Q. So that all of that southern Michigan territory along the line of the Michigan Central and along the line of the Lake Shore and along the line of any of these other Detroit-Chicago roads would necessarily have at the most a 10-cent rate, would it not?—A. Yes, that is true.

Q. So that the rates between Chicago and these Ohio River gateways, in the way that you have explained, affect and measurably control the rates from Chicago east as far as Toledo and Detroit, do they not?—A. They do.

(Paper marked defendants' Exhibit 138.)

Q. Have you caused to be prepared a table, being defendants' Exhibit 138, showing the rates on a number of commodities other than oil to be the same from Chicago to Toledo as from Chicago to Detroit?—A. I have.

Q. And does that appear in defendants' Exhibit 138?—A. It does.

Q. With the tariff authorities?—A. The full tariff references, yes, sir.

Mr. ROSENTHAL. I offer defendants' Exhibit 138 in evidence.

Q. Having in mind your explanation of the Chicago-Detroit and the Chicago-Toledo rate, how does that affect the rates between Chicago and Detroit and between Chicago and Toledo? I mean by that, how do the railroad companies scale these rates in the making of them?—A. In checking in rates from Chicago to points intermediate
with Toledo and points intermediate to Detroit, the rates
9852 on the particular commodity under consideration would be based primarily on the Chicago-Toledo and the Chicago-Detroit rate.

Q. And they would be scaled down from that?—A. Yes, sir; those would necessarily be the maximum figures, from which they would scale down as best they could.

Q. Has the Standard Oil Company a large refinery at Lima, Ohio?—A. It has—one of the defendant companies has.

Q. And it also has a refinery at Cleveland?—A. Yes, sir.

Q. At Franklin, Pennsylvania?—A. Yes, sir.

Q. Buffalo, New York?—A. Yes, sir.

Q. And Olean, New York?—A. That is true.

Q. Baltimore?—A. That is true.

Q. Philadelphia?—A. Philadelphia.

Q. At Constable Hook, New Jersey?—A. Yes, sir.

Q. At Parkersburg?—A. That is correct.

Q. And at Rochester?—A. Yes, sir.

Q. And also at Whiting?—A. And at Whiting.

Q. Have you caused to be prepared a statement showing the number of cars of oil shipped into the southern peninsula of Michigan from these various refineries that I have just named?—A. I have.

Q. And is that shown on defendants' Exhibit 139?—A. It is.

Q. That shows, does it not, that notwithstanding the alleged preferential rate that the Government claims the Standard Oil Company has from Whiting into the southern peninsula of Michigan, Whiting only supplies 33.4 per cent of all the oil that goes into that territory from the different Standard Oil refineries?—A. That is true.

9853 Q. And 66.6 per cent comes from the other refineries that I have named?—A. Yes, sir.

Q. You have selected here the year's business for 1905. Is that a fair representative year of the years that preceded it?—A. It is.

Q. And there was no special purpose in selecting 1905 as against any other year?—A. No, sir.

Q. The Government has selected 1904–5 as one of its favorite years. (No answer.)

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 139.

Q. On page 157 of the Government's petition they have a table showing a comparison of rates in cents per 100 pounds from Whiting to Toledo, Cleveland, and Pittsburg to the following-named cities in Michigan, to wit: Battle Creek, Detroit, Grand Rapids, Muskegon, and Saginaw, from which table they seek to demonstrate a lower rate from Whiting to those points than from Toledo, Cleveland, and Pittsburg to those points in Michigan. Have you caused to be prepared a table showing a comparison of rates from Toledo and Lima to those respective points in Michigan?—A. I have.

Q. Lima being the refinery that peculiarly, as we think we can show, competes with Toledo with respect to that Michigan territory? (No answer.)

Q. Is that table the one marked defendants' Exhibit 140?—A. It is.

Q. Now, there are a number of independent refineries at Toledo?—A. Yes, sir.

Q. And there is only the Standard Oil refinery at Lima?—

9854 A. That is all.

Q. Defendants' Exhibit 140 shows, does it not, that the rates from Toledo and Lima to Battle Creek, Grand Rapids, Muskegon, and Saginaw are in every instance precisely the same on oil?—A. That is correct.

Q. But that the rate from Toledo to Detroit is 6½ cents, while the rate from Lima to Detroit is 8 cents, does it not?—A. That is true.

Q. So that when you come to institute a comparison in connection with these southern Michigan towns that the Government has selected, between Lima, the point from which the Standard Oil Company mainly supplies that territory, and Toledo, the independent point, you find that in the only instance where there is a difference, it is in favor of Toledo?—A. That is true in regard to those five points.

Mr. KELLOGG. Now, why don't you ask him the distance to Detroit?

Q. And those were the five points selected by the Government as the basic points?—A. That is true.

Mr. KELLOGG. Before this exhibit is offered I want to ask a question.

Mr. ROSENTHAL. I want to offer several of them together.

Mr. KELLOGG. I would like to ask him right there, in connection with this, if the distance from Toledo to Detroit is not 60 miles, and from Lima to Detroit about 130 miles?

WITNESS. That is about the correct figure as I remember it; yes, sir.

9855 Q. Now, inasmuch as it seems to be the Government's position that that should make a difference in the rate of a cent and a half, so that Toledo should have a rate of 6½ cents from Toledo to Detroit as against Lima's 8 cents, do you know the distance between Lima and Cincinnati and Toledo and Cincinnati?—A. Toledo is about 80 miles farther from Cincinnati than Lima is.

Q. Now, what is the rate from Lima to Cincinnati and from Toledo to Cincinnati?—A. 10 cents in both instances.

Q. So that although Lima is 80 miles closer to Cincinnati than Toledo is, in that case Toledo gets the same rate as Lima does?—A. It does.

Q. And Cincinnati and Detroit are the two large consuming points north and south of those two refinery points?—A. That is true.

Mr. KELLOGG. Our table shows the distance of all of them.

Mr. ROSENTHAL. That is one reason why we did not show them.

Mr. KELLOGG. I suppose so! You did not want to.

Mr. ROSENTHAL. No. Contrary to the way you try a case, we try not to duplicate what is already in, and concerning which there is not any difference of opinion or any issue.

Q. Now, have you caused to be prepared a table showing what per cent of the total oil sold by the Standard Oil Company in Michigan is sold in the city of Detroit?—A. About 30 per cent.

Q. Is that shown in defendants' Exhibit 141?—A. That is true.

9856 Q. Does that show for the years 1902, '3, and '4 30.38 per cent of all the oil sold in the State of Michigan by the Standard Oil Company was sold in the city of Detroit?—A. Yes, sir.

Q. So that at the point to which the independent refineries in Toledo had an advantage of 1½ cents a hundred pounds over the Standard Oil refinery at Lima, the Standard Oil Company sold 30.38 per cent of all of its oil sold within that State?—A. That is true.

Q. In defendant's Exhibit 139 it is shown among other things that the total number of cars of oil that went into the southern peninsula of Michigan in the year 1905 from Franklin was 514. What proportion of the 514 cars came from the Eclipse Works and what proportion from the Galena-Signal?—A. About two-thirds from the Eclipse.

Q. The Eclipse is the refinery of the Standard Oil Company located at Franklin that is engaged in the manufacture of refined oil?—A. That is true.

Q. And the Galena-Signal is engaged largely, if not entirely, in the manufacture of lubricating oil, principally railroad lubricants?—A. Yes, sir.

Mr. ROSENTHAL: I now offer in evidence defendants' Exhibits 137, 138, 139, 140, and 141.

By Mr. KELLOGG:

Q. Mr. Felton, referring to Exhibit 139, shipments from various points into the peninsula of Michigan, of the 514 cars from Franklin, you say two-thirds were from the Eclipse?—A. Yes, sir.

Q. Do you know what kind of oil that was?—A. No, sir.

9857 Q. You don't know whether it was lubricating oil or illuminating oil?—A. I know that it could not have been more than a very small percentage lubricating oil, because the Eclipse is not very extensively engaged in the lubricating work.

Q. The Eclipse manufactures lubricating oil, doesn't it?—A. Some, yes, sir.

Q. Why not furnish a statement of just exactly what those 514 cars were, whether they were lubricating or refined oils?—A. What does my counsel say to that?

Mr. ROSENTHAL. We will be glad to do that.

Q. Now, the shipments from Buffalo, 395 cars, how were they shipped—by water?—A. No, sir.

Q. All by rail?—A. Yes, sir. No water shipments from Buffalo from the Atlas Works.

Q. Which way were they shipped?—A. I think the business out of there was pretty well divided among the roads serving Michigan territory.

Q. Partly through Canada?—A. Yes, sir.

Q. You don't know how?—A. Yes, sir; the Michigan Central had some and the Lake Shore some, and the Nickel Plate and their connections.

Q. What kind of oil was that—lubricating oil?—A. The Atlas Works at Buffalo do not make very much lubricating oil. They make some. That was the general run of refined manufactured oil.

Q. Please give us a statement of the kind of oil in each one of these shipments from each one of these places, will you not, in Exhibit 139?

A. Do you want to get that before this case closes?

9858 Q. Where did you get this from?—A. From the refineries.

Q. In making this up they had to know what that oil was, didn't they?—A. I don't think they did. They just took the number of cars shipped. That means that somebody has got to go over every individual shipment.

Mr. ROSENTHAL. We will do the best we can on getting the information for you.

Q. Olean manufactures lubricating oil, too, doesn't it?—A. Only to a very limited extent, as I understand it.

Q. But it does manufacture lubricating oil, does it not?—A. Oh, odds and ends of lubricating, but it is not a lubricating factor from the Standard Oil marketing point.

Q. Rochester manufactures lubricating oil?

Mr. ROSENTHAL. I suppose all the refineries manufacture some, including Whiting.—A. We do not suppose that Michigan took all these cars of lubricating oil—enough to lubricate the State for four years.

Q. I do not suppose anything about it; I want to know the facts, that is all. I am not supposing. You say that from Whiting, during the year 1905, there were shipped 1,896 cars into the southern peninsula of Michigan?—A. That is right.

Q. When you made the statement to the Department of Commerce and Labor in 1906, what did you include in the 2,118 cars that went into Michigan from Whiting?

Mr. ROSENTHAL. Let him see the statement that he made.

Mr. KELLOGG. It is a letter of his to Mr. Smith, Commissioner of Corporations. (Copy of letter handed to Mr. Rosenthal.)—

9859 A. How many cars were there there?

Q. 2,118 cars.

Mr. ROSENTHAL. Wait a minute. Let me read the letter first. This statement goes as to Michigan. Our statement goes only as to the southern peninsula, Mr. Kellogg. Our exhibit here is limited to the southern peninsula.

Mr. KELLOGG. I think this was, too, if you will look at the testimony.

Mr. ROSENTHAL. What?

Mr. KELLOGG. I think they were both limited to the southern peninsula, if you will look at the testimony that he gave before the Commisioner.

Mr. ROSENTHAL. I think not.

WITNESS. I would like to explain that.

Q. Certainly; I want your explanation.

Mr. ROSENTHAL. Read the letter.

Q. Read the letter and then explain it.—A. That is not a letter.

Mr. ROSENTHAL. That purports to be a copy of a letter.

WITNESS. There was an error in the stenographer's writing up of that case, and it means this: That I commenced to talk to Mr. Smith, who happened to come in, Mr. Durand will remember, toward the last of my testimony, and I said, "Mr. Smith, there are two or three matters that came up at the last hearing that I was not able to answer specifically." The colon should not appear after the word "Smith." Is not that right?

Mr. DURAND. Yes; that is so.

Mr. KELLOGG. Yes; that is correct.

WITNESS. Now, I would like to look over this a moment,

9860 but I remember that distinctly.

Q. But refreshing your memory, there were some things came up in your testimony that you could not give him at the time, but which you looked up afterward. That statement which appears there in the form of a letter, but is a statement, was furnished afterward by you in your testimony as being the correct shipments from Whiting to Michigan, and I think in looking over your testimony you

will find that you were talking entirely about the southern peninsula of Michigan, because the rates into northern Michigan were not then under consideration at all.—A. I could not say, without reading all the preceding pages; but if you will remember, I was under great pressure as to time before Mr. Garfield, and the figures that I gave were hurriedly prepared, and it was so understood, that the figures that I gave as to shipments and data were to be considered as approximate; and I think that if we got within 200 cars, which we seem to have done, that we did very well, because in some cases I telephoned my office and had the information the next morning.

Mr. ROSENTHAL. That is, you telephoned from Washington to your office?

WITNESS. Telephoned from Washington to New York, yes, while the figures I am giving now were carefully prepared from the refinery records.

Q. Now, Mr. Felton, is it not a fact that you were there testifying and explaining rates into the southern peninsula of Michigan, the same rates that you are now explaining here?

Mr. ROSENTHAL. I think he should be shown his statement in that regard.

9861 Mr. KELLOGG. Why, certainly, he has got a copy of it.

Mr. ROSENTHAL. Was it testimony, to begin with, Mr. Kellogg?

Mr. KELLOGG. Oh, I do not mean sworn testimony.

WITNESS. Well, admitting that is so——

Q. Yes, I think that is true. I am trying to get at the facts.—A. Now, when I asked for the shipments into Michigan, I undoubtedly asked simply for the shipments into Michigan, and did not specify the southern peninsula. There is considerable business that goes from Whiting to the northern part of Michigan, and that will very easily take care of that difference.

Q. Will you look up and see whether it is a fact that in 1905 the Whiting shipments were 2,118 cars?

Mr. ROSENTHAL. Into the whole of Michigan.

Q. Into all of Michigan, or into the southern peninsula, or whether this statement is incorrect.—A. Yes, I will do that, but I have no doubt in the world that that is where that discrepancy occurs, that when I asked for the shipments from Whiting in 1906 I asked for the shipments from Whiting into the State of Michigan.

Q. Lima is estimated about 70 miles south of Toledo, is it?—A. I would like to settle that point by having an Official Guide and finding the distance.

Mr. ROSENTHAL. Lima is 132 miles from Cincinnati, and Toledo is 212 miles.

Mr. KELLOGG. Oh, I presume they are all in the same territory.

WITNESS. That would make it 80 miles.

9862 Q. About 80 miles?—A. Yes, sir; about 80 miles.

Mr. ROSENTHAL. That difference I happen to know.

Mr. KELLOGG. Yes; Toledo is about 60 miles from Detroit and Lima about 140.

Mr. ROSENTHAL. I think Toledo is exactly 65 miles from Detroit, isn't it, Mr. Schindler?

Mr. SCHINDLER. Sixty miles by the Michigan Central and 65 by the Lake Shore.

WITNESS. Well, 60 and 80, that makes 140.

Q. Now, you spoke about the rates from Toledo and Lima to Cincinnati being the same, and they are also the same from Lima to points in northern Michigan—I do not mean the northern peninsula, but the northern part of the lower peninsula of Michigan, or the middle part—are they not?—A. Yes; to many places in Michigan the rates are the same from both Toledo and Lima.

Q. From Lima to Saginaw the rates are the same as from Toledo to Saginaw, although Lima is 80 miles south of Toledo?—A. That is true, as shown on defendants' Exhibit 140.

Q. So that without respect to distances, with the exception of Detroit, substantially all of those places in Michigan are placed on an equality with Toledo; that is, Lima and Toledo placed in an equal position, substantially?—A. There are a great many places in Michigan to which the rates are the same from Lima and Toledo.

Q. Nevertheless, do you know whether any lubricating oil was shipped from Whiting into Michigan or not?—A. I do not know what those eighteen hundred and odd cars contained.

9863 Q. Most illuminating oil, aren't they?—A. I don't know.

By Mr. ROSENTHAL:

Q. Now, so far as your investigation extends to all points south of Lima and Toledo, they took the same rates, did they not—Toledo and Lima?—A. Yes.

Mr. KELLOGG. All points?

WITNESS. All points south of Toledo and Lima. There might be some very nearby stations where a distance tariff would make a less rate; but ordinarily, yes.

Mr. KELLOGG. I do not want to dispute the witness, but I think in Ohio you will find that is not the case.

WITNESS. Only to a very few stations. We will show the rates later. If I am wrong, why, I will admit it.

Q. On page 157 of the Government's petition the following averment is made: That discriminations between Whiting and a number of competitive points named with respect to shipments into substantially all of the territory in Michigan, Indiana, Illinois, and southwestern Ohio were in effect from 1900 to 1906; and they select as their competitive points to compare with Whiting, Pittsburg, Pennsylvania, Cleveland, Ohio, and Toledo, Ohio. You have examined those tables, have you, on pages 158, 159, 160, and 161 of the petition, where the Government attempts to make that comparison?—A. I have.

Q. Now, they have instituted there a comparison, as you will observe, between Whiting on the one hand, which they select as the

Standard point of shipment for the territory designated, and
9864 Cleveland, Toledo, and Pittsburg as the points from which the independent dealers shipped into the territory designated. Generally speaking (because we will develop it specifically somewhat later), what refineries of the Standard Oil Company, or what refinery of the Standard Oil Company largely supplied that particular territory?

Mr. KELLOGG. What territory are you referring to?

Q. The territory named on pages 158 to 161 of the petition.—A. Lima is a very large factor in that field.

Q. Whiting, I suppose, is the largest factor in the State of Indiana, and particularly western Indiana?—A. That is true.

Q. What Standard refineries are mainly competitive with the Toledo-Cleveland and Pittsburg independent refineries?—A. Lima, Cleveland, Pittsburg, Franklin, and Olean.

Q. So that what the Government has done in the table set out in pages 158 to 161 of its petition is to institute a comparison between Whiting and independent refinery points; whereas, in order to make a fair comparison on the rate question, the comparison should have been instituted between those independent refinery points and the Standard refinery points that are principally competitive therewith and in the same general rate territory?—A. That is correct.

Q. Now, have you caused to be prepared a table showing a comparison of rates from Toledo, Ohio, where many of the independent refineries are located, and Lima, Ohio, where one of the principal Standard refineries is located, and a great many cities and towns within this same general territory that was selected by the Government in the tables set out on pages 158 to 161, inclusive?—A. I have.

9865 Q. And also to certain other towns, from Cleveland and from Whiting?—A. Yes, sir.

Q. I show you defendants' Exhibit 142. Is that the table in question, concerning which I have just asked you?—A. Yes, sir.

Q. Now, there you show, for example, that from Toledo, Ohio, to Cincinnati, Ohio, the rate per ton per mile is 95/100 of a cent, do you not?—A. I do.

Q. Whereas, from Lima, Ohio, where the Standard refinery is located, the rate per ton per mile to Cincinnati is 1.44 cent?—A. That is correct.

Q. Let us see if we can find two towns here where the distance is substantially the same. Take Springfield, Illinois, for example. That is 362 miles from Toledo, is it not?—A. That is true.

Q. The rate per ton per mile from Toledo to Springfield is 94/100 of a cent, is it not?—A. Yes, sir.

Q. The distance from Lima to Springfield is 319 miles, and the rate per ton per mile is 1.07 cent, is it not?—A. It is.

Q. Take Muncie, Indiana. The rate from Toledo to Muncie, Indiana, is 8½ cents. The distance is 164 miles. The rate per ton per mile is 1.03 cents, is it not?—A. That is correct.

Q. But from Whiting, Indiana, the rate is 10 cents per cwt. and the distance is 167 miles, just three miles farther than Toledo; but the rate per ton per mile is 1.20, is it not?—A. 1.2 cent is the rate per ton per mile.

Q. I do not understand, Mr. Felton, that you went or attempted to go over all of the towns within that territory, did you, for the purpose of getting at the rate comparison between Toledo and
9866 Lima?—A. No, sir; I did not.

Q. Or Whiting and Cleveland?—A. No, sir.

Q. The Government seem to have selected certain towns in their exhibits, as I understand you have simply selected certain other towns within that same territory, in which the comparison when instituted is favorable to Toledo as compared to Whiting in some instances and to Lima in other instances and to Cleveland in other instances?—A. Yes, sir.

Q. And you have not attempted to exhaust the field by finding every town, or anywhere near every town, within that territory and instituting a comparison?—A. Your statement is correct.

Q. Then, as I understand it, you simply made this selection of certain of these towns for the purpose of showing that the tables as prepared by the Government do not fairly represent the whole field?—A. That is correct.

Q. I think you found also that Mr. Schindler had made a mistake in making the rate from Toledo to Mount Vernon, Illinois, did you not?—A. I did.

Q. The rate, as stated in the petition, from Toledo to Mount Vernon, Illinois, is 19 cents. As I understand you, the Toledo, St. Louis & Western Railroad tariff, I. C. C. 206, effective February 3, 1903, names a rate between those two points of 17 cents per hundred, does it not?—A. That is true.

Mr. ROSENTHAL. I offer to the Government, for its inspection, the tariff in question, to-wit, Toledo, St. Louis & Western Railroad Company I. C. C. 206. [Handing same to Mr. Kellogg.]

9867 Mr. KELLOGG. I should like to ask a question about this Exhibit 142.

Mr. ROSENTHAL. Very well.

Mr. KELLOGG. Mr. Felton, at what date were those rates on Exhibit 142 effective, during 1904 and 1905?

WITNESS. The tariffs from which they are taken show right on the sheet.

Mr. KELLOGG. Well, I know, but it does not show which——

Mr. ROSENTHAL. Oh, yes, it does.

Mr. KELLOGG. Which towns.

Mr. ROSENTHAL. It shows 1900, 1903, 1900, 1896.

Mr. KELLOGG. Yes. For all that appears on Exhibit 142 you may be comparing rates of 1896 with 1905. We can't tell. There is nothing on this exhibit to show.

Mr. ROSENTHAL. The tariffs are all effective until some other tariff takes their place.

Mr. KELLOGG. The tariff of July 5, 1905, was not effective to compare with the rate of October, 1903, or January 4, 1900.

Mr. MILLER. You might ask the witness whether the tariff from Toledo and from Lima to each of these towns that he took, was effective.

Mr. KELLOGG. There is nothing on this Exhibit 142 to show which tariff applies to which place, so that no one can trace it out.

Mr. MILLER. You know on what railroad they are, don't you?

Mr. KELLOGG. Of course we could go and hunt up the tariffs, but this does not furnish any information.

9868 Mr. ROSENTHAL. We have the tariffs here. We will give you the tariffs.

WITNESS. Mr. Lownde, one of my assistants, who has done considerable of this clerical work, informs me that these tariffs, issued in 1900 and 1903, along in there, were in force during the years 1904 and 1905.

Mr. KELLOGG. I know, but you took 1900——

Mr. ROSENTHAL. And therefore they cover the same period of time as the Government exhibit.

WITNESS. That is true.

Mr. KELLOGG. But there is nothing to show that the tariff effective January 4, 1900, was in effect January 5, 1905.

WITNESS. As a rule, the same tariff names the rates from Toledo and Lima. They were in force simultaneously.

Mr. KELLOGG. Why didn't you place opposite each town a letter or a number to show what tariff was in effect, so we could trace it?

WITNESS. Because it would have taken such a vast amount of work that we would not have gotten to this before next January.

Mr. KELLOGG. These Pennsylvania tariffs and some other tariffs here do not give any date at all. No one can tell.

Mr. ROSENTHAL. They describe the tariffs.

Mr. MILLER. We have given you the numbers.

Mr. ROSENTHAL. We will produce the tariffs if you want them.

Mr. KELLOGG. Do you know that all these rates were in force during the year 1905?

9869 WITNESS. I have just stated that the man who did the work says they were in force in 1904 and 1905.

Mr. KELLOGG. But you don't know about that. Well, now, take Illinois. Illinois is supplied by oil from Whiting, isn't it?

WITNESS. Not altogether.

Mr. KELLOGG. Well, substantially all?

WITNESS. I think I have some figures on that a little later, which will——

Mr. KELLOGG. What is that?

WITNESS. I have some figures which I will give you on that a little later, which will more specifically answer your question.

Mr. ROSENTHAL. We will show that in detail later on.

Mr. KELLOGG. Substantially all of Indiana and Illinois are supplied from Whiting?

Mr. ROSENTHAL. No, that is not true.

WITNESS. No, I do not admit that at all.

Mr. KELLOGG. Now, you make a——

Mr. ROSENTHAL. That is the very next thing we go into, Mr. Kellogg, carload shipments from the different refineries to the different points covered by these exhibits on pages 158 to 161 of the Government's petition.

Mr. KELLOGG. Those exhibits ought to give the kind of oil. How do we know what kind of oil——

Mr. ROSENTHAL. Then, why did you put the exhibits in? I am just advised that you gave us Mr. Boltz' statement, of 15 or 20 pages, without a single tariff reference.

9870 WITNESS. Not a tariff reference on the sheets.

Mr. ROSENTHAL. And never have produced them, although I objected to the statement going in unless the tariffs were produced. We have not even a reference, on that 15 or 20 page statement, of a single tariff that he used in making it up, and that over objection.

WITNESS. I do believe they show the tariffs in the petition.

Mr. KELLOGG. Oh, well, we furnished you them afterwards.

Mr. ROSENTHAL. Oh, no, no, no; I beg your pardon. Boltz promised to do a great many things, but did not do it.

Mr. KELLOGG. Mr. Schindler furnished you those as a Government exhibit.

Mr. ROSENTHAL. Pardon me, they were never furnished in connection with Boltz' statement. My objection still stands on that, and I have had all of those exhibits tabulated, all of the Government exhibits tabulated where I made specific objections on those grounds, and have a list of them now.

WITNESS. There is not a thing on the petition, for pages 158 to 161, that shows a tariff reference—not a thing.

Mr. KELLOGG. But Mr. Schindler made a statement afterward to you, giving the tariff reference to Exhibits 160 to 161.

Mr. ROSENTHAL. No, he simply testified wholesale that they were correct.

Mr. DURAND. Mr. Schindler?

Mr. ROSENTHAL. Yes, we were all getting tired about that time, at Washington.

Mr. KELLOGG. I know you were, but we were not.

9871 Mr. ROSENTHAL. You were the man that wanted to get away. What are you talking about? You induced me to agree to let him testify wholesale instead of retail.

Mr. KELLOGG. Now, Mr. Felton, isn't it a fact that Whiting is the principal supply of Illinois and Indiana?

Mr. ROSENTHAL. Now, Mr. Kellogg, I am going to show, in my next series of exhibits, and in connection with these Government exhibits from 158 to 161, the sources of supply of this whole territory, taking them up table by table.

Mr. KELLOGG. Do your exhibits show whether it is lubricating oil or illuminating oil?

Mr. MILLER. They show, or the cross-examination will show.

By Mr. KELLOGG:

Q. You have testified about Springfield, Illinois. Is there any oil shipped to Springfield from Lima?—A. I can answer that question better when we get along. I haven't anything before me——

Q. Who makes up these exhibits about the shipments?—A. I do not understand you.

Q. What is that?—A. I do not quite understand the gist of that.

Q. Who makes up the exhibits about the number of carloads of oil shipped from different places?—A. Those exhibits are made up in my office.

Q. In your office. Have you the records showing it?—A. No, sir.

Q. Where do you get the records?—A. I get them from the refineries.

9872 Q. Then, the refineries furnish you the number of carloads shipped from the various places to various places?—A. No; I called on the refineries for this—such refineries as I could, for this specific information.

Q. Why not have somebody from the refinery testify to it, then?

Mr. ROSENTHAL. Testify to what?

Q. To these shipments. You have no records of the shipments, have you, Mr. Felton, in your office?

Mr. ROSENTHAL. We will be very glad to accommodate you in that respect if you will give us time, and we will take you from one refinery point to another and produce the original books of entry, car by car and waybill by waybill, if you will only give us the time to do it.

Mr. KELLOGG. I object to defendants' Exhibit 142.

Mr. ROSENTHAL. On what ground?

Mr. MILLER. On the ground that we do not produce the man who made it?

Mr. KELLOGG. Oh, no; because it is not shown that there are any shipments from those places. It is immaterial because it does not show that they shipped from those places.

Mr. MARTYN. Do your exhibits show shipments?

WITNESS. You do not show any shipments in your petition.

Mr. KELLOGG. I will withdraw the objection. I do not care anything about it.

WITNESS. I have simply met you on your own ground.

Mr. KELLOGG. Oh, now, your counsel are perfectly able to take care of this case without your helping.

WITNESS. Yes, I think so.

Mr. KELLOGG. You just attend to the testimony and answer the questions.

WITNESS. Oh, well, you are making remarks about my exhibit, and I think I have a right to reply as long as I am respectful in my reply.

9873 Q. Generally speaking, first, during all of the period covered by the Government in these tables which they have put in

evidence, is it or is it not true that the defendant companies—that is, the Standard Oil companies—shipped oil from their refineries at Rochester, Buffalo, Olean, Pittsburg, Franklin, and Cleveland into the same territory as that reached by the refineries at Toledo, Whiting, and Lima?

Mr. KELLOGG. Unless the witness knows of his own knowledge, I object to it.

A. That is true.

Q. Generally speaking, did they, on these shipments made from these eastern refining points, pay the same rates as were paid by their eastern competitors?

Mr. KELLOGG. That is objected to as the tariff is the best evidence of the rates. I am perfectly willing you should present schedules and statements, but when he goes to talking broadcast about rates, I object.

Mr. ROSENTHAL. Well, strike that out. I will go into that specifically anyway.

Q. I show you defendants' Exhibit 143. Will you please tell us what that is?—A. Defendants' Exhibit 143 is a table showing comparison of carload shipments in the year 1905, from Whiting and from eastern Standard refineries to the several places named in the tables on pages 158 to 161 of the petition.

Q. Are the numbers there stated carloads?—A. Yes; and I so read in my answer. The figures represent carload shipments.

Q. Taking your first paragraph as an illustration, from the
9874 Whiting refinery there were shipped to Cincinnati in the year 1905, 357 cars of oil?—A. That is correct.

Q. From other Standard refineries there were shipped 947 cars of oil; is that right?—A. Yes, sir; that is right.

Q. And then you group nine towns in Ohio and total them, do you?—A. I take the nine towns named on Government's petition, page 158.

Q. Do I understand that the towns you have taken in defendants' Exhibit 143 are the same towns which the Government has taken in their exhibits on pages 158 to 161 of the petition?—A. That is correct; divided into States.

Q. And you show here, town by town, the source of supply, taking Whiting by itself and all of the other refineries combined by themselves?—A. Yes, sir.

Q. Covering those towns in that way, in Ohio, Indiana, Illinois, Louisville, Kentucky, and Michigan, the same being the towns and territory selected by the Government, how many carloads of oil went into that territory during the year 1905 from Whiting?—A. 5,210 cars.

Q. And from the other Standard refineries?—A. 11,688.

Q. And, stated in percentage, 30.8 from Whiting and 69.2 from the other Standard refineries?—A. That is correct.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 143.

By Mr. KELLOGG:

Q. The information for making this Exhibit 143 was obtained from what office of the Standard Oil Company?—A. I called on the refineries (giving the towns) to advise the number of carloads
9875 of oil during that year shipped from those refineries to those towns.

Q. You have no personal knowledge of it whatever?—A. I did not go to the refineries and get the record. I called on the refineries for the record. They did not know for what purpose I asked for the information.

Q. All you know about it is what information you received from the refineries?—A. That is true.

Q. I notice here Illinois, and Louisville, Kentucky, shipments from Whiting to Chicago none; shipments from other refineries, 2096. What do you mean by that?

Mr. ROSENTHAL. We explain that in our next exhibit.

Mr. KELLOGG. Why not explain it here?

Mr. ROSENTHAL. It is in the note. "If shipments to Chicago Switching District are not included we have:"——

Q. Why did you not include in Chicago and Chicago Switching District the shipments from Whiting?—A. I consider that Chicago and Whiting are practically one. The business in and around Chicago is handled on switching basis.

Q. But under Cleveland, the production in Cleveland, that is, consumed in Cleveland, you have included the other side.

Mr. ROSENTHAL. Where?

Mr. KELLOGG. The first one, Cleveland, 1163 cars.

Mr. ROSENTHAL. Where are you talking about?

Mr. KELLOGG. Defendants' Exhibit 143.

Mr. ROSENTHAL. What do you mean by that?

Mr. KELLOGG. From Whiting to Cleveland, and then all other refineries, you say, in Cleveland.

Mr. ROSENTHAL. Certainly. It does not include Cleveland
9876 refineries.

WITNESS. No, sir. There is no switching movement in those 1,163 cars from other refineries to Cleveland. That is oil that was shipped in to Cleveland.

Mr. KELLOGG. From other refineries?

WITNESS. Yes; from other refineries.

Mr. KELLOGG. What other refineries?

Mr. ROSENTHAL. From refineries other than Cleveland.

WITNESS. From refineries other than Cleveland.

Q. Where are the statements from which you made this up?—A. I don't know whether I have got them now or not.

Q. You say that none of the 1,163 cars was produced in the Cleveland refinery?—A. I say that the 1,163 cars shown on this exhibit as being shipped to Cleveland do not include——

Mr. ROSENTHAL. From other refineries?

WITNESS.——from other refineries; came from refineries other than at Cleveland.

Q. Where are the refineries at Cleveland?—A. Why, they are out on the Erie and B. & O. tracks, somewhere.

Q. How far from Cleveland city?

Mr. ROSENTHAL. They are in the city of Cleveland.

WITNESS. My answer is meant to include the entire Cleveland city, and to mean that these cars were shipped in from some refinery like Franklin or Olean, and in no way is meant to dodge the question on the Cleveland switching basis.

Q. From what refineries were the 1,163 cars shipped?—A. The shipments came in there from Franklin and from Olean; I remember those; I have not——

9877 Mr. ROSENTHAL. We can give you that in detail if you want it, Mr. Kellogg.

WITNESS. I can not carry the details of all this tremendous business.

Q. Mr. Squire testified in this case that less than 2 per cent of all the oil sold in Ohio was shipped in from the outside, as I recall it.

Mr. ROSENTHAL. I don't remember the percentage stated by him. I don't think he stated that in that way.

Q. How does it happen that 513 cars were shipped in from Whiting, and 3,893 were shipped in from the outside?

Mr. ROSENTHAL. Mr. Kellogg, you remember that Mr. Squire specifically excluded Cincinnati in his statement. Your question manifestly unfair, because you do not consider that.

Mr. KELLOGG. We will leave Cincinnati out, then.

Mr. ROSENTHAL. Cincinnati had 359 of the 913 cars, and Mr. Squire excluded that in whatever statement he made.

Q. How many of the three thousand cars came from other refineries throughout the State to these places?—A. Lima might have made some shipments there. I haven't got the details in my mind, of course. It is impossible to remember.

Mr. ROSENTHAL. We will put that in more in detail before we get through.

Q. Where did the cars come from, the 2,096 shipped to Chicago? From what refinery?—A. Those, as I recall it, were pretty well split up. There was quite a lot of business from time to time that moved into Chicago from all the Standard refineries.

9878 Q. Do you remember about how many from Franklin?—A. No; I do not.

Q. Chicago is a great distributing point for lubricating oil, isn't it?—A. Mr. Kellogg, I can not answer questions that bear on marketing, because I am not familiar with it.

Q. Well, you know in a general way that Chicago is a great railroad center, do you not?—A. I do.

Q. And that the railroads all buy their lubricating oil from the Galena-Signal Oil Company, don't you?—A. No; I do not.

Q. Well, substantially all.—A. I know they buy a great deal; yes, sir.

Q. It appears in this case that from 95 to 97½ per cent comes from the Galena-Signal Oil Company.

Mr. ROSENTHAL. And that we regretted we did not have the balance.

Mr. KELLOGG. Yes, I have no doubt you regret that you do not have all of the business.

Q. Now, Mr. Felton, the Chicago railroads, that is, the railroads running west and southwest from Chicago, receive their lubricating oil at Chicago, do they not?—A. First, I can say I do not know, and then I would say I think not. I think some of it is consigned through to points beyond.

Q. Well, a very large amount of it goes to Chicago?—A. I don't know about that. A large amount of it is consigned through, to points like Milwaukee, Omaha, Des Moines, and St. Paul. I should say, to think that over a little bit hard, that of the Galena-Signal oil that was supplied to the western railroads that by far the major portion was consigned through.

9879 Q. Do you know that of the 2,096 cars shipped into Chicago that none of them was shipped on beyond Chicago afterwards in the same cars?—A. I could not say as to that.

Q. So that the 2,096 cars might include all cars consigned to Chicago and from there reconsigned on the various railroads?—A. If the oil paid the rate into Chicago and the goods were sold and the buyer reconsigned them, what has that got to do with this statement?

Mr. ROSENTHAL. Not a thing on earth.

Mr. KELLOGG. We will not argue the reason why, but do you know that it does not include it?—A. I do not.

Q. You don't know?—A. I don't know. I think it is immaterial whether it does or not.

Q. Well, we will take care of that. I don't think that is up to you.—A. I think it is when you are asking this line of questions.

Q. Now, Mr. Felton, don't you know that the Galena-Signal Oil Company sells its oil delivered at Chicago without any additional rate of freight, but as to all oil delivered west of Chicago there is added a certain number of cents per gallon for freight?—A. I don't know a thing on earth about the Galena-Signal Company's basis of sales.

Q. You don't know anything about it?—A. No, sir.

Q. You do know, don't you, that a large amount of lubricating oil is shipped to Chicago as a distributing point?—A. I know no more about that than a man on the street. I am not a marketer; I am not a refiner.

9880 Q. I would like to know how you are competent to make up such a statement as this?—A. I have got the carload shipments that came into Chicago and paid the rates that our competitors paid from the same shipping district into Chicago, and there the responsibility of this statement rests.

Q. But you don't know what kind of oil it was?—A. And it is immaterial as long as the freight rates were paid.

Q. You don't know where it came from, what particular refinery?—A. Oh, I had the details when the statements were made up.

Q. Now, take East St. Louis. You show 1,520 cars shipped from Whiting to East St. Louis in the year 1905. Is that all of the oil that was shipped from Whiting to East St. Louis or through East St. Louis to points beyond in the year 1905?—A. The statement that I called for——

Q. Please answer the question, will you, Mr. Felton?—A. Yes, sir. I am going to answer it specifically and in detail. You will not have any fault to find with my answer if you will wait until I make it.

Q. All right; blaze away.—A. The inquiry I made in regard to East St. Louis was to give me a statement of the number of carloads of oil shipped in 1905 from Whiting to East St. Louis, that being the town that is mentioned in your petition on page 161.

Q. Now, a large amount of oil is shipped to East St. Louis, through East St. Louis to St. Louis and beyond, is there not?

Mr. ROSENTHAL. Oh, I suppose practically all of this oil went to points beyond. Nobody will contend that 1,520 carloads of oil went to East St. Louis and stopped there.

9881 Q. What I am trying to find out is, if 1,520 cars is all the oil shipped to East St. Louis or through East St. Louis to points beyond. Now, state whether you know or not.—A. The request I made, as I stated before, was as to the number of cars shipped to East St. Louis.

Q. What?—A. I asked for the number of cars shipped to East St. Louis.

Mr. MILLER. To destination.

WITNESS. Yes.

Q. So, if a thousand cars were shipped to St. Louis through East St. Louis, it would not be included, would it?—A. If the cars were consigned to St. Louis, Missouri, and if the refineries making up this report complied carefully with request I made, a car to St. Louis, Missouri, would not be in the statement.

Q. Now, you are familiar with the testimony of these various cases which showed the number of cars shipped over the Burlington, the Alton, the C. & E. I., and the Big Four to East S. Louis and points beyond, are you not, Mr. Felton?

Mr. ROSENTHAL. There was not any showing shipments over the C. & E. I. that I remember of.

Mr. MILLER. Or over the Burlington.

Mr. KELLOGG. We showed that in this case—a large number.

Mr. ROSENTHAL. Oh, I think not.

Mr. KELLOGG. Certainly we did.

A. I don't remember the number of cars shown in those various cases, Mr. Kellogg.

Q. You do not pretend to say, then, that 1,520 cars were all

9882 the cars shipped to East St. Louis and through East St. Louis

to points beyond?—A. I pretend to say that the Whiting refinery advised me that in 1905 they shipped that number of cars to East St. Louis.

Q. That would be consigned to East St. Louis proper?—A. That is as I understand it; yes, sir.

Q. Now, will you please find out how many cars were shipped to East St. Louis and went beyond to St. Louis or points beyond, consigned to St. Louis or to any other point going to East St. Louis?

Mr. MILLER. We shall have to object to that.

Mr. ROSENTHAL. The Government can not use this equity case any more than it has up to this point in getting specific evidence with which to prosecute pending criminal cases.

Mr. KELLOGG. We are not trying to. We are showing the unfairness of this particular——

Mr. ROSENTHAL. Oh, the Government never has tried to do that until it has been caught.

Mr. KELLOGG. Never tried to do it at all.

Q. Now, will you please show the number of cars shipped to East St. Louis and through East St. Louis?

Mr. ROSENTHAL. To points beyond?

A. One of the counsel said he would have to object. I would like to have a little further advice on that subject.

Q. Do you say you will not furnish it?—A. I do not.

Mr. ROSENTHAL. He does not say anything about it.

WITNESS. I do not say so, Mr. Kellogg.

Q. Well, will you?

9883 Mr. ROSENTHAL. He says he will seek advice of counsel in respect to that.

Q. Now, you thought it was material to show the number of cars shipped to East St. Louis from Whiting, did you?—A. East St. Louis is one of the towns named on page 161 of Government's petition.

Mr. ROSENTHAL. Now, Mr. Kellogg, we have no objection to your getting at the sources of his information in making up this exhibit. We object to a general cross-examination, though, at this time. We have been pretty liberal in that regard.

Q. Why did you take the year 1905?—A. In starting out I found that it would be hard to get the records from some of the refineries for the year 1904, while I found I could get full and complete reports for 1905, and so I took 1905.

Mr. ROSENTHAL. 1906 and 1907 would not have been representative years because the Government would then have been in a position to claim that that was after they had instituted this attack.

WITNESS. Yes.

Q. I am not talking about 1906 and 1907. I am talking about 1904 and 1903.—A. The Bureau of Corporations did not make itself manifest until December, 1905, and so I honestly felt that 1905 was as representative a year as I could use, as representative as any other year.

Q. Well, these rates were being investigated during July and all through the summer, weren't they?—A. There was no change in rates to any of these points during 1905.

Q. Was not the East St. Louis rate changed on July 1,
9884 1905?—A. I was going to say that the rate to East St. Louis was changed on July 1, 1905.

Q. And the rate to Evansville was changed when—December 1, 1905?

Mr. ROSENTHAL. The C. & E. I. rate was in force to East St. Louis until 1906.

Mr. KELLOGG. You are mistaken, Mr. Rosenthal.

Mr. ROSENTHAL. I have Mr. Durand's statement under oath to that effect, haven't I?

Mr. DURAND. No, sir.

Mr. ROSENTHAL. I will look it up if you have any doubt about it.

Mr. DURAND. I said the rate was filed then. I did not say it was in force then.

Q. Now, Mr. Felton, there was a large refinery built by the Standard at Sugar Creek, Missouri, near Kansas City, in 1904, which commenced to ship oil in 1905, wasn't there?

Mr. ROSENTHAL. Mr. Felton, I shall have to advise you that that has not anything to do with the sources of your information in making up this particular exhibit. You are under no obligation to answer it until counsel gets to the cross-examination.

Q. Do you decline to answer?—A. I think I will ask you to wait until you come to the cross-examination.

Q. Isn't it a fact that after 1904 and during 1905 the Standard Oil Company shipped a large amount of oil from Sugar Creek into this country, and therefore the shipments from Whiting correspondingly decreased?—A. Which country?

Q. Oh, all of Missouri and southwestern country.

9885 Mr. ROSENTHAL. We do not cover Missouri in this statement.

A. I have not said anything about Missouri or the southwestern country in this statement. I have given you a statement of shipments to East St. Louis.

Mr. ROSENTHAL. The fact about the matter is, Mr. Felton, you have given him a statement of shipments to the very towns which, for some reason or other, the Government saw fit to select in making up the exhibits which they have in their petition, from pages 158 to 161. That is true, isn't it?

WITNESS. Yes, sir.

Mr. ROSENTHAL. You took precisely the same towns that the Government took, whatever their reasons may have been.

WITNESS. Yes, sir.

Mr. ROSENTHAL. And in this statement you undertook to show, with respect to the towns which they selected for purposes of their own, the exact sources of supply of the oil that went to those towns.

WITNESS. That is correct.

Mr. ROSENTHAL. And that is all that this statement pretends to show, isn't it?

WITNESS. That is all.

Mr. KELLOGG. The Government's table only names the rates to East St. Louis. It doesn't say anything about the amount of shipments, does it?

Mr. ROSENTHAL. Why, certainly not.

Mr. KELLOGG. Is that correct?

WITNESS. That is true.

Mr. KELLOGG. Now, wait until I get through cross-examining.

9886 Q. Practically all the oil that you shipped into that southwestern country—I mean Missouri—from Whiting, went through East St. Louis, didn't it?

Mr. ROSENTHAL. I shall object to that as an improper line of questioning at this particular time. I have not the slightest objection to your going into that exhaustively when you come to your cross-examination, but it hasn't anything to do with the sources of the witness' information with respect to this particular exhibit.

WITNESS. So I will have to ask you, Mr. Kellogg, to wait until that time.

Mr. KELLOGG. You decline to answer, do you?

Mr. ROSENTHAL. Oh, no, no. He simply asks you to wait and comply with the ruling of the examiner——

Mr. KELLOGG. The examiner hasn't made any ruling on that.

Mr. ROSENTHAL. That you should cross-examine generally when your cross-examination time comes.

Q. Isn't it a fact that all the oil—substantially all—that is shipped to East St. Louis goes beyond that point?—A. Not at all.

Q. Substantially all?—A. There is a large consumption of oil at East St. Louis.

Q. Do you pretend to say there are 1,520 cars used in East St. Louis proper?—A. I could not say, sir.

Q. The larger amount of the oil shipped there goes beyond, doesn't it?—A. I would not undertake to answer questions of that kind without figures.

9887 Q. Isn't it a fact that during the year 1905 and the years preceding the Whiting refinery shipped a large amount of oil through East St. Louis to St. Louis to be distributed in the country southwest?

Mr. ROSENTHAL. Now, that we object to. The question was asked before and we objected to it.

A. I will be glad to meet that, under advice of my counsel, when cross-examination comes.

Mr. ROSENTHAL. Or when the criminal prosecutions come.

Q. Now, these shipments to Louisville, Kentucky, were those shipments to Louisville proper or shipments through Louisville to other places?—A. Those shipments were to Louisville. I did not ask for shipments beyond. I asked for shipments to Louisville.

Q. You do not know, then, how many cars were shipped through Louisville to points beyond, from Whiting?—A. I should say from the small number there that those cars went to Louisville proper.

Q. Now, take Evansville, Indiana. You show here shipped from Whiting to Evansville only 137 cars. That is to Evansville proper, is it?—A. Yes, sir. That is, I asked for the number of cars shipped from Whiting to Evansville, not from Whiting through Evansville.

Q. There was a large amount of oil shipped to Evansville for points beyond, wasn't there?—A. Considerable oil goes from Whiting through Evansville to points beyond.

Q. That is not included in here?—A. That is evidently not included therein.

9888 Mr. ROSENTHAL. And in the same way, Mr. Felton, you did not include the shipments that went from all of the refineries other than Whiting to those points for points beyond?

WITNESS. No, sir; it would make a difference in the total.

Q. Now, let us see about that. I notice that you say other refineries shipped to Detroit, Michigan, 1,102 cars. Were those cars all shipped to Detroit for local consumption?—A. I understand they were, and that understanding is borne out by the fact that I have already testified that of the entire business into Michigan done by the defendant campanies 31 per cent was sold in Detroit.

Q. Then you know that none of the 1,102 cars was reconsigned from Detroit to any towns around or beyond Detroit?—A. I do not know that, but the rate combination is such that that could hardly be possible.

Q. Those cars shipped to Chicago—you don't know that they were for local consumption?—A. I have already answered that as long as they pay the freight into Chicago it is immaterial, so far as this statement is concerned, what is done with those cars after delivery is taken by the consignee.

Q. The 574 cars that were shipped from other refineries to East St. Louis—do you know whether any of those cars went beyond East St. Louis?—A. I ask for the number of cars consigned to East St. Louis.

Q. But if they were reconsigned at East St. Louis to St. Louis or points beyond, they would not show in here, would they?—A. I do not know whether they would or not.

Mr. KELLOGG. I object to defendants' Exhibit 143, because the information therein shown is not within the knowledge of the

9889 witness, and it is incompetent at this time.

Mr. ROSENTHAL. Your objection, then, is based upon the ground that his information is secondary?

Mr. KELLOGG. Yes.

Mr. ROSENTHAL. And that is the only objection?

Mr. KELLOGG. Manifestly, on its face, it is not complete.

Mr. ROSENTHAL. That is never a legal objection. But is the only objection that you have to it the fact that his information is secondary?

(No response.)

Mr. MILLER. I suppose counsel for the Government would permit the same rule to be applied to his witnesses. He seems to insist upon it.

Mr. ROSENTHAL. If that objection is insisted upon, Mr. Kellogg, we will furnish you with the primary sources of information.

Mr. KELLOGG. If you will furnish the total cars shipped to these places——

Mr. ROSENTHAL. We will not trade with you or furnish you a different exhibit.

Mr. KELLOGG. I am not going to make any objection to this going in——

Mr. ROSENTHAL. In other words, if we will furnish you such information as you want you will not object to it?

Mr. KELLOGG. Not at all. That is not the objection that I make.

Mr. ROSENTHAL. You may call upon us when you are upon
9890 your redirect in any way that you please for any additional exhibits that you may want and for any primary information that we have, and then, of course, we will get it and be glad to furnish it to you if it is within our power; but if the objection here goes to this exhibit upon the ground that Mr. Felton's information is secondary, then we will have to produce the primary information as a matter of course.

Mr. KELLOGG. When you produce the primary information I can get at the accurate information.

Mr. ROSENTHAL. My point is, that that call should be made by you when you are on the redirect.

Mr. KELLOGG. What I object to, Mr. Rosenthal, is this: You bring in a statement here that does not show all the facts, it is not a fair statement at all, and then Mr. Felton says, "Oh, this is correct, but I don't know as to the rest." Now, of course, if Mr. Felton will inform himself——

Mr. ROSENTHAL. Of course we will never agree on that, on the fairness of it.

Mr. KELLOGG. If Mr. Felton will inform himself as to these facts and make a statement as to the whole facts, I have no objection to it being on information from the other companies.

Mr. ROSENTHAL. Mr. Felton has informed you accurately as to every fact in this statement. He has told you that the shipment of 1,520 cars from Whiting to East St. Louis was for East St. Louis proper and do not include the cars that went to East St. Louis for points beyond, and the same with respect to a number of other points.

Mr. KELLOGG. What about Chicago?

Mr. ROSENTHAL. Just what is it you find fault with about
9891 the statement so far as Chicago is concerned?

Mr. KELLOGG. He does not know whether it was to be used in Chicago locally or whether it was reconsigned to points beyond, or whether it was lubricating oil, or anything about it.

Mr. ROSENTHAL. Of course we did not separate in this statement the lubricating oil from the refined oil. That we do later on.

Mr. KELLOGG. I will look it over to-night.

Mr. ROSENTHAL. I think with respect to that statement, so far as the Chicago cars are concerned, when you come to think it over you will yield on that. We will give you anything and everything we have got and will turn over all the sources of information and the original data, but we want to do that when you come to your redirect, and then you can recall Felton and hammer him all you please.

(An adjournment was here taken until the morning of Tuesday, October 6, 1908, at 10.30 o'clock.)

9892 ROOM 677, FEDERAL BUILDING, CHICAGO, ILL.,
Tuesday, October 6, 1908—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison; on behalf of the defendants, Mr. Moritz Rosenthal, Mr. John S. Miller, Mr. Chauncey W. Martyn.

HENRY E. FELTON, recalled, and his direct examination resumed, as follows:

By Mr. ROSENTHAL:

Q. In connection with the tables printed in the Government's petition, pages 158 to 161, they in those tables institute a comparison between the rates from Cincinnati, Cleveland, and Columbus to Pittsburg, Cleveland, Toledo, and Whiting, Indiana. Have you caused to be prepared a table built or constructed in the same way, with the exception that you have added thereto Lima, Ohio?—A. I have.

Q. I show you defendants' Exhibit 144. Is that the table in question?—A. It is.

Q. Defendants' Exhibit 144 is an exact duplicate of the tables set out in Government's petition from pages 158 to 161, except what you have added here in relation to Lima, which is printed in red ink?—A. Yes, sir. Could I see the petition?

Mr. KELLOGG. We will check this up, and if we find any errors in it, we will call his attention to them. There is no
9893 objection.

Q. Generally speaking, Mr. Felton, defendants' Exhibit 144 shows, does it not, a higher rate per ton per mile from Lima, Ohio, to the various points named in the exhibit than from Toledo, Ohio, to the various points named in the exhibit?

Mr. KELLOGG. That is objected to. The exhibit is the best evidence of that, and the general statement is not accurate at all. It is merely for the sake of getting it in, hoping somebody will read his statement and not read the exhibit.

Mr. ROSENTHAL. No; it is for the sake of getting it in so that whoever reads the record in connection with this exhibit will understand the purpose of it, without in every instance referring to the exhibit.

A. In the majority of cases the rate per ton per mile is shown to be greater from Lima than from Toledo.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 144.

Mr. KELLOGG. Have you in this exhibit figured the short-line distances in all cases from Lima?

WITNESS. Yes, sir; those were the instructions.

Q. That is, you figured the rate by a combination of the shortest line?—A. The very shortest that could be found.

Q. Have you figured the number of towns in this exhibit where Toledo has the advantage over Lima in rate per ton per mile?—A. Have I summed up where Toledo has the advantage and where Lima has?

Q. Yes. There are 46 towns named on this exhibit; and have you in your mind now the number of towns out of the 46 where Toledo has the advantage over Lima?—A. No, I have not, Mr.
9894 Rosenthal; I did not figure up the towns.

Q. I think an examination will show that there are 34 out of the 46 where Toledo has the advantage.

Mr. KELLOGG. Now, Mr. Felton, as a general thing, on short hauls the rate per ton per mile is higher than on long hauls?

WITNESS. As a general thing. There are exceptions.

Mr. KELLOGG. That is the rule, generally speaking?

WITNESS. Yes, sir.

Mr. MILLER. You mean over the same line?

Mr. KELLOGG. I mean over all lines.

WITNESS. No; not as he put the question to me.

Mr. KELLOGG. I mean as a general proposition in making rates all over the country you will find, generally speaking, that the rates are lower per ton per mile for the long hauls.

WITNESS. That is true; and that applies as well on the exhibit showing the rate per ton per mile from Whiting as it does from Toledo.

Mr. KELLOGG. Lima and Toledo are generally in the same rate territory, aren't they?—A. Yes; quite generally.

Q. What you call a blanket rate?—A. Very largely; yes, sir.

Q. And that is true of other commodities as well as oil?—A. I so understand. I have not checked the other rates up.

Q. The Government in these exhibits printed on pages 158 to 161 has instituted a comparison between Whiting, Pittsburg, Cleveland, and Toledo in fixing the rates per ton per mile from those various points. What, if anything, is there that is unfair about that method of comparison?—A. In my opinion it was unfair to omit Lima,
9895 for the reason that Lima made shipments to the points named.

Q. And what further factor is there there that makes the exhibit unfair in its relation to rate-making territories? Is Whiting in a different rate-making territory than the other points named on that exhibit?—A. That is correct.

Q. Please explain that a little more fully. In what rate-making territory is Whiting?—A. Whiting is in the rate-making territory of Chicago.

Q. Is Chicago, generally speaking, on a lower freight basis than the Ohio points?—A. Yes; rates from Chicago have been subjected, in the rate-making history of the country, to a very much more severe pressure than the rates from Lima, Toledo, Cleveland, and points in that vicinity.

Q. Did the Chicago & Eastern Illinois have anything to do with the low rate-making basis on Chicago rates?—A. Yes; I considered that the Chicago & Eastern Illinois Railroad was a decided factor in the basis of rates that has finally been built up into western Indiana points; and in making rate checks, a low basis of rates running along through western Indiana would naturally have its effect into quite an eastern portion, or at all events along into the middle part of the State of Indiana.

Q. The Chicago & Eastern Illinois was a north-and-south road, was it not, from Chicago into southern Indiana and part of southern Illinois?—A. Yes; that is true.

Q. And it was in the early nineties a comparatively new road, was it not?—A. It was.

Q. And was it then a part of any system, or did it stand by
9896 itself?—A. It stood absolutely alone; a little later on being associated with what is known as the Chicago & Indiana Coal Road, running from La Crosse, Indiana, down into Brazil, but very close to the Indiana State line, they both being consolidated under the Chicago & Eastern Illinois.

Q. Until it became a part of the Frisco System, it stood as an individual road, did it not?—A. That is true.

Q. And about when did it become part of what is known as the Frisco system—three or four years ago?—A. I think it was some time in 1904 or '5; I am not exact on that.

Q. What roads were its principal competitors with respect to Chicago traffic into southern and eastern Illinois and into Indiana?—A. The Chicago & Alton, running over the western part of Illinois; the Illinois Central more particularly with the central and southern part of Illinois. In Indiana there was the Monon, the Louisville, New Albany & Chicago, the Cleveland, Cincinnati, Chicago & St. Louis road, and the Pennsylvania Lines. The Pennsylvania people had a line from Chicago to Terre Haute through Logansport.

Q. You were general freight agent of the Chicago & Eastern Illinois up to 1897, were you not?—A. I was general freight agent from November, 1893, until May, 1897.

Q. And from 1888 or 1889 to 1893 you were assistant general freight agent there?—A. With the exception of part of the year 1893 I was continuously in a traffic position with the C. & E. I. from 1882 until 1897.

9897 Q. So you are entirely familiar with the history of its rate making from 1882 up to 1897?—A. I am, and more than any

other man had personally to do with the making of the rates on that road.

Q. What is the fact with respect to a low basis of rates having been made by the C. & E. I. with respect to all kinds of commodities from the eighties up to, say, 1897, when you left?—A. We had in force a very low basis of commodity rates.

Q. Why?—A. One reason was that the Chicago & Eastern Illinois occupied a peculiar position. It was practically the dividing line between the Central Freight Association territory, backed up by the Trunk Line on the east, and the Illinois Freight Association, and then the Western Trunk Line Associations on the west; and for quite a number of years the Chicago & Eastern Illinois was not a member of any of those associations. We at times permitted them to print the name of our road on some of their joint tariffs, but we were a free lance. Being in that position, we found this condition: Rates between the great jobbing joints in the East and the West, that is, east of the Mississippi River, are based on a rate or a system of rates taking Chicago to New York as 100 per cent; rates to and from other points being scaled up or down, 110 or 115 per cent, 98 or 95 per cent, as may have been agreed upon in the traffic meetings. Now, every point on the Chicago & Eastern Illinois road from Chicago to Terre Haute, Indiana, inclusive, was a 100 per cent point. Consequently, a rate on any commodity from New York, Philadelphia, Baltimore, or any other of the great manufacturing or jobbing
9898 points of the East to Chicago immediately became the rate to all the C. & E. I. common points. There are a great many of them. About every 25 miles between Chicago and Terre Haute an east-and-west road or line of some kind crosses the C. & E. I. So in self-defence we had to make low rates, in order to get any traffic at all on these principal commodities to these junction points, and we had to do that to enable the Chicago jobber to sell a pound of goods in that territory. If Danville could get a carload of sugar at 15 cents from New York, there was no chance in the world for a Chicago jobber to sell any sugar in Danville, when he had to pay 15 cents to get it to Chicago and then ship it from Chicago to Danville.

Q. Unless he could get an exceedingly low rate from Chicago to Danville?—A. Unless he could get an exceedingly low rate from Chicago to Danville. Now, when I was assistant general freight agent, having charge of freight matters on the C. & E. I. road, and when I was general freight agent, I had just two great ambitions. One was to build up the traffic of the C. & E. I. road, and the other was to take it into or from Chicago. If I found traffic coming to any point on the C. & E. I road outside of Chicago that a Chicago jobber or manufacturer could make, I would see him, talk to him, find out what kind of a rate would be necessary for him to supply the trade along the C. &. E. I. road, then find out what I was earning on that same class of traffic coming to me at any junction point, and then make a commodity rate, either openly or by rebate, or some way,

from Chicago that would enable the Chicago jobber to take care of that freight along the western line of Indiana and the eastern line of Illinois.

9899 Q. That is to say, the Chicago & Eastern Illinois road was a road that was interested in the building up of traffic from Chicago to points on its line, because by so doing, and only by so doing, would it get the largest proportion of the rate in connection with freight shipments to those points; that is true, is it not?—A. That is true; and then there was another reason; we were a Chicago road. Along in the early eighties we were all trying to build up Chicago trade, and we did everything we could to accomplish that. And then again, if I could get a man in Chicago to make a line of goods that would give him the control of the Terre Haute market, I got all of it, instead of such percentage as I might be able to get of competitive traffic coming from some point east or west.

Q. That is to say, under such circumstances you got a hundred per cent of the revenue instead of only your pro rata share of the revenue?—A. I got a hundred per cent of all the revenue, if I could bring about that state of affairs, instead of my pro rata per cent of perhaps a limited quantity of it.

Q. And the railroad theory under such circumstances, as I understand it, is that it is better to get a hundred per cent of a low rate than it is to get less than a hundred per cent of a higher rate?—A. Well, I did still better. I got a hundred per cent of a higher rate, because I made my commodity rate something higher than the percentage of the through rate from other points.

Q. So you caught them going and coming?—A. Tried to.

Q. What about a low rate having been made on shipments of oil from Chicago to points on the Chicago & Eastern Illinois for

9900 the very reasons that you have just explained?—A. I made rates from Chicago and from Whiting—in most cases I think from Whiting—because there was nobody in Chicago that ever asked for carload rates along that line, or had business to ship. I made rates, though, from Chicago and from Whiting to points on the C. & E. I. road, based on the theory that I have just explained.

Q. That is to say, based upon the theory that it was more profitable for the Chicago & Eastern Illinois to get 100 per cent of the business by making a low rate from Whiting than by getting a portion, or its division of the traffic in cases where the traffic came from eastern points?—A. That is true.

Q. And as I understand it, the purpose in making that low rate, then, was to prevent the oil being shipped into that territory covered by the Chicago & Eastern Illinois, a north-and-south road, from a point that was not upon the Chicago & Eastern Illinois?—A. That is true; that is correct.

Q. And did you or did you not do the same thing with other lines of traffic than oil?—A. I did.

Q. Was not that the policy of the road with respect to all commodities handled?—A. The policy of the traffic department of the

C. & E. I. road under my jurisdiction was to build up Chicago's trade and the business of the C. & E. I. road together. We had no interest in any large manufacturing town but Chicago, if we could get the goods in or out of that town; and if I may use the expression, we constantly played into the hands of the Chicago jobber and the Chicago manufacturer. By doing that, we not only got their freight
9901 traffic, but we educated the people along the line of the C. & E. I. road to come into Chicago to buy their goods, and then we got their passenger business. What did we care about Toledo, Cleveland, or South Bend, or some other point like that? Chicago was our slogan.

Q. Mr. Felton, I direct your attention to the exhibit printed on page 154 of the Government's petition, which one of its witnesses (I think Mr. Schindler) testified was correct. Have you caused an examination to be made of that exhibit, with a view of ascertaining whether it is correct or ncorrect?—A. I have.

Q. I show you defendants' Exhibit 145. Is that a correction of the Government's exhibit printed on page 154 of the petition, the corrections being shown in red ink?—A. It is.

Mr. ROSENTHAL. I offer defendants' Exhibit 145 in evidence.

By Mr. KELLOGG:

Q. Did you take your distances from Chicago or Whiting?—A. Whiting.

Q. By what road?—A. The Lake Shore.

Q. Did you take the short line?—A. I took the Lake Shore road.

Q. Well, did you take the short line in every case?—A. Yes, sir; that is the short line.

Q. Then, you did take the short line from Whiting to each one of these places?—A. Yes, sir.

Q. Where did you get your mileage from?—A. I took it out of the Official Guide.

Q. Out of the Official Railway Guide?—A. Out of the Official Guide. The statement was prepared under my instructions to take the short-line mileage, Mr. Kellogg, so they used the Official Guide.

9902 Mr. ROSENTHAL. I should like to have you point out, Mr. Felton——

Mr. KELLOGG. Wait a moment. I have not got through asking yet.

Mr. ROSENTHAL. All right. I was going to give you a little more fodder. I would like to have you point out, Mr. Felton, wherein the Government made a mistake in figuring the mileage, in connection with the Big Four, for example.

WITNESS. The only way that I could account for the Government's figures was this: The Cincinnati or Michigan division of the Big Four road, coming down from the North, comes into Elkhart, and in a measure or in a manner parallels the Lake Shore road for some distance east, and then crosses the Lake Shore road and goes on south, the Big Four road in that respect being in no way connected with busi-

ness between Chicago and Toledo; but because the points of actual or geographical contact between the Big Four and the Lake Shore on the eastern and western ends of that little distance happened to be less mileage via the Big Four, why, it seems that the man making up this statement for the Government arbitrarily and unreasonably and illogically eliminated for that distance the mileage of the Lake Shore and put in the mileage of the Big Four.

Mr. ROSENTHAL. Although no traffic is hauled over the Big Four by that route?—A. Absolutely not a pound, and the Big Four was in no way a factor.

Mr. ROSENTHAL. And the Big Four was a north-and-south road, while the Lake Shore, of course, was an east-and-west road?

WITNESS. Yes, sir.

9903 Q. Now, Mr. Felton, will you look at the Lake Shore & Michigan Southern?—A. Yes, sir.

(Examining the Official Railway Guide.)

Q. Give me the distance from Chicago to Goshen, Indiana, by the Lake Shore.

Mr. ROSENTHAL. This is from Whiting.

Q. Well, from Chicago to Goshen. I asked that question. Will you please give it to me?—A. It says Chicago to Goshen, 112 miles.

Q. Now, what is the distance from Chicago to Whiting? Seventeen miles, isn't it?—A. About 17 miles.

Q. That would make 95 miles, wouldn't it, which is stated in the Government exhibit? Is not that correct?—A. My explanation made just now was made in regard to from Chicago to Toledo. Now, if you are going to bring up something else, why, that is——

Q. That is one of the towns in your table which you have corrected from 95 to 104 miles. Now, I ask you, by the Lake Shore is it not 95 miles from Whiting to Goshen, Indiana, just exactly as the Government states in its exhibit?

(Witness and his assistant examine the Official Railway Guide.)

A. We will have to consult the data on which this was made. We will do that and give you an answer.

Mr. ROSENTHAL. We will furnish the data on that.

WITNESS. Yes; we will have to get the data on that.

Mr. ROSENTHAL. Just pass that, then, for the time being.

9904 WITNESS. I think we called on the Lake Shore for some official figures.

Q. Now, wait a moment. That is correct, isn't it, in the Government exhibit?—A. I will have to answer that the data on which that was made is not right now in my possession. If you will give me a give me a few minutes, we will have it checked up.

Q. The Railway Guide you have got is the standard railway guide, isn't it?—A. The Official Railway Guide is a standard for distances.

Q. You have got it before you, haven't you?—A. I don't know what month this is or what year.

Q. Take Kendallville, Waterloo, Bryan, Wauseon, and Toledo, all of the points which you corrected. Please look at that guide and see

if the Government have got them correct.—A. We are having a man check them now; it will take a few minutes.

Mr. ROSENTHAL. Mr. Kellogg, while we were in Washington, and while Mr. Boltz was on the stand, you offered in evidence petitioner's Exhibits 655 and 656. I objected to them at the time, upon the ground that no rate authorities were mentioned upon either of the exhibits. No tariffs were ever given us as references in connection with those exhibits, and you at that time promised that that would be done.

Mr. KELLOGG. Well, I supposed Mr. Schindler was going to attend to it, or that somebody would.

Mr. ROSENTHAL. It never has been done, and these two exhibits undertake to cover several hundred points; and unless the tariff authorities are furnished us, we shall have to move to strike out those two exhibits.

9905 Mr. KELLOGG. We will furnish them.

Mr. ROSENTHAL. And in order to preserve the record, I now move to strike out from this record petitioner's Exhibits 655 and 656, upon the ground that there are no tariff references that are furnished in connection therewith.

Mr. KELLOGG. We will furnish them to-day.

Mr. ROSENTHAL. And I want to say that it will not do, simply to dump in a carload of tariffs on those several hundred towns at this stage.

Mr. KELLOGG. Have you looked up Exhibit 145?

WITNESS. I have a clerk looking it up now.

Mr. KELLOGG. Have you the data on which that statement was prepared?

WITNESS. He has the Official Guide.

Mr. LOWNDE. In the guide we have now we figured 104 miles. We do not know what the date of the Guide is. It looks like a rather old one.

WITNESS. Will you kindly let that go until after recess? The envelope upon which that was prepared is over in Mr. Martyn's office. Let it go until afternoon.

(Map marked defendant's Exhibit 122–A.)

Mr. ROSENTHAL. This is a map which I forgot to put in the other day, in connection with that Olean water route. I want to put it in now.

By Mr. ROSENTHAL:

Q. Mr. Felton, I show you defendants' Exhibit 122–A. Is that a map that you have caused to be prepared showing the water route from New York Harbor to Burlington, Vermont?—A. Yes, sir.

9906 Q. Is the Hudson River navigation there connected with Lake Champlain by canal?—A. It is.

Q. What canal?—A. By the Champlain, Delaware and Hudson Canal.

Q. Is that shown on the map?—A. That is shown on the map, as paralleling the Hudson River from Waterford to Fort Edward, and

then the canal going on direct to the connection with Lake Champlain.

Mr. MARTYN. Crossing the Hudson at Fort Edward.

Q. So that you have a direct water route from New York to Burlington, as shown on that map?—A. That is correct.

Q. And the water route from New York to New London, and the rail route from New London to Burlington, as heretofore testified?—A. Yes, sir. I would like to say in this connection, as shown on the map, that Vergennes, Vermont, also received freight from New York Harbor via canal, by boat, direct to Vergennes.

Mr. ROSENTHAL. I offer defendants' Exhibit 122–A in evidence.

Q. Now, Mr. Felton, I want to direct your attention to the Parkersburg-Marietta situation, referred to in the petition on page 148 and in Government Exhibit 586. The contention is made by the Government that Parkersburg, where there was a Standard refinery, had a discriminatory rate as against Marietta, where there was a refinery or where there were refineries that did not belong to the Standard; and with respect to most of the points selected by the Government, as shown on page 148, the difference in rate was 3½ cents a hundred; with respect to Savannah 9 cents a hundred, and Charleston

9907 13 cents a hundred; the points selected there by the Government being all southern points. Will you please explain how Parkersburg reached the South—by what rail connections?—A. Almost all of the business shipped from Parkersburg into the South went via Lexington, Kentucky.

Q. And at Lexington connected with the various southern roads?—A. With the Cincinnati, New Orleans and Texas Pacific, and then down through the South, which gave Lexington access to about all the South.

Q. What is the rail connection between Parkersburg, West Virginia, and Lexington, Kentucky?—A. The B. and O. Railroad to Huntington, as I recall the connection, and then the Chesapeake and Ohio.

Q. Huntington is on the south side of the Ohio River, is it not?—A. Yes, sir.

Q. Both Parkersburg and Lexington are south of the Ohio River, are they not?—A. That is true.

Q. So that there is no occasion for the traffic, in moving between those two points, to cross the Ohio River?—A. That is true.

Q. Marietta is north of the Ohio River, is it not, about 14 miles north of Parkersburg?—A. That is correct.

Q. In the State of Ohio?—A. Yes, sir.

Q. Is there any direct rail connection between Marietta and Lexington?—A. Not direct, unless you would go from Marietta to Parkersburg and thence to Lexington, or from Marietta to Cincinnati and then down to Lexington. Of course there were ways to get there, but they were circuitous and not direct.

9908 Q. And not routes upon which any rates had ever been made or attempted to be made?—A. Not so far as oil is concerned.

Q. So that Marietta traffic, in order to reach Lexington, would have to go either via Parkersburg or via Cincinnati?—A. No; not necessarily, but I should say, from my knowledge of the geography there, that those would be the only practical routes.

Q. The only feasible routes?—A. The only feasible routes.

Q. What was the rate from Parkersburg to Lexington?—A. We are talking of southern business?

Q. Yes.—A. The rate from Parkersburg to Lexington, on traffic destined south, was 9 cents per 100 pounds.

Q. And what was the rate from Marietta to Cincinnati?—A. Nine cents per 100 pounds—the same as the rate from Parkersburg to Lexington.

Mr. KELLOGG. What is that?

WITNESS. Nine cents per 100 pounds—the same as the rate from Parkersburg to Lexington. Yesterday I said 12, thinking of Louisville. I will correct that later.

Q. So that the rate from Parkersburg to Lexington of 9 cents was the same as the rate from Marietta to Cincinnati, namely, 9 cents.—A. That is true.

Mr. KELLOGG. That is on oil, you are talking about?

WITNESS. I am talking about oil; yes, sir.

9909 Q. Now, from Cincinnati south, what was the rate compared with Lexington, from Lexington south?—A. Three or 3½ cents higher; I do not recall.

Q. And was Cincinnati also 3 or 3½ cents higher than Louisville on business going into the South?—A. That is correct.

Q. Lexington taking Louisville rates?—A. Yes, sir.

Q. So that this difference that the Government has figured out here, of 3½ cents, between the Marietta-Parkersburg rate arose by reason of the fact that Cincinnati took a 3½ cent higher rate than Lexington and Louisville, points south?—A. That is correct. A little different combination on some points could be made via Louisville at a half cent per 100 pounds less than via Cincinnati. I have not all that complicated system of rates in my head.

Q. The Government, in figuring out a difference of 13 cents in the Marietta-Charleston rate as compared with the Parkersburg-Charleston rate, and of 9 cents difference between the Marietta-Savannah rate, and the Parkersburg-Savannah rate, have figured that by way of the Virginia gateways, have they not?—A. Yes, sir.

Q. That is, they have taken the rate from Parkersburg to Richmond, Virginia, using that as the gateway, and then figured the rate from Richmond to Savannah and to Charleston respectively?—A. That is the way I recall their exhibit.

Q. And in that way they have worked out a difference in favor of Parkersburg of 9 cents with respect to Savannah shipments
9910 and a difference of 13 cents with respect to Charleston shipments?—A. Yes, sir; I so recall their figures.

Q. Now, as a matter of fact, during the years 1903, 1904, and 1905, did the Standard Oil Company ship any oil into the South from Parkersburg by way of the Virginia gateways?—A. No, sir.

Q. So, whatever the rate may have been on that combination which the Government has worked out to Savannah and to Charleston, it was a rate that was not used by the Standard Oil Company during those years of 1903, 1904, and 1905?—A. That is correct. During 1903, 1904, and 1905 Parkersburg shipped no oil into the South via the Virginia cities.

Q. Both Savannah and Charleston are water points, are they not?—A. They are.

Q. And, as a matter of fact, are largely supplied from Bayonne, are they not, by water route?—A. That is true.

Q. I think it has already been testified to in this case by Mr. Schindler that the local rate from Marietta to Parkersburg was 5 cents?—A. I remember that he so testified at Washington.

Q. And that is the fact, is it not?—A. We have a tariff somewhere showing that rate.

Q. So that the Marietta refiner, even had he used the Richmond gateway, by paying the 5-cent rate to Parkersburg and then the Parkersburg-Savannah and Charleston rate via Richmond, would have gotten a rate within 5 cents of what Parkersburg got instead of 9 and 13 cents, respectively?—A. Yes, sir.

Q. And, as I understand it, it is a very recent ruling of the
9911 Interstate Commerce Commission which provides that where there is a through rate the shipper must use the through rate rather than the sum of the locals even if the sum of the locals is lower than the through rate.—A. The Hepburn bill practically established the theory of a through rate.

Q. And prior to that time, where the sum of the locals made a lower rate, it was, as I understood you the other day, the universal practice to use the sum of the locals?—A. Yes, sir.

Q. Instead of the through rate?—A. If they were less.

Q. If they were less. So, what the Government has done here is to figure out a paper rate which no practical shipper ever would have used?—A. So it seems.

Q. And for some reason or other they have omitted to figure what the rate would have been if the 5 cent local had been used from Marietta to Parkersburg?—A. They entirely eliminated that local rate from their computation.

(Paper marked " Defendants' Exhibit 146 " for identification.)

Q. Have you examined and caused to be analyzed petitioner's Exhibit 586?—A. I have.

Q. Showing table of rates on petroleum, effective 1904, to southern points?—A. Yes, sir.

Q. From Evansville, Louisville, Cincinnati, Whiting, Toledo, Pittsburg, Parkersburg, Marietta, and one or two other points. Now, directing your attention to defendants' Exhibit 146 for identification, and page 2 thereof, being so much of it as relates to the rates from

Parkersburg, West Virginia, to four southern points, have you checked up the Government exhibit with a view of ascertaining
9912 whether the rates named by them on their exhibit 586 covering those four southern points are accurate or otherwise?—A. I have.

Q. And with what result?—A. I have found errors to the four points.

Q. Are those indicated in red print on defendants' Exhibit 146 for identification?—A. Yes, sir.

Q. That is, your red-ink figures show the rate error that the Government made in making up its Exhibit 586 in connection with those four points?—A. They do.

Q. As a matter of fact, the rates from Parkersburg and Marietta to those four points where the Government made the mistake, are exactly alike, are they not?—A. Yes, sir; exactly like.

Q. Have you caused to be prepared a table showing correctly the rates from Parkersburg, West Virginia, and Marietta, Ohio, to a number of towns in Illinois, Ohio, Michigan, Indiana, and other States?—A. Yes. Those towns are what you might call basing points or representative points.

Q. That is, on defendants' Exhibit 147, the towns which you have selected as showing the rates from Parkersburg and Marietta are what are regarded, in so far as freight traffic is concerned, as representative basing points?—A. Yes, sir. Not particularly basing points, but representative points.

Q. As representative points. Defendants' Exhibit 147 shows, does it not, that Marietta had precisely the same rate as Parkersburg to each and all of the points named on this exhibit excepting Boston, Massachusetts?—A. No, except Boston, Massachusetts, and Richmond, Virginia; all but two points.

9913 Q. Now, with respect to Richmond, the Parkersburg rate was 17½ cents to Richmond, and the Marietta rate was 24 cents?—A. Yes, sir.

Q. Being a difference of 6½ cents. But as I have already pointed out, had the sum of the locals been taken the difference would have been only 5 cents?—A. That is true.

Q. With respect to Boston, the Parkersburg-Boston rate was 30 cents and the Marietta, Ohio, rate was 25 cents?—A. Yes, sir.

Q. And aside from those two points the rates to all of the other points named on that exhibit are precisely the same, are they not?—A. That is correct.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 147.

By Mr. KELLOGG:

Q. Where does Parkersburg ship most of its oil?—A. Oh, that depends on manufacturing conditions. Sometimes Parkersburg ships very largely into the South, and I have known Parkersburg to ship very largely into Ohio and away over into Indiana.

Q. Your statement as furnished here shows it ships very little to Michigan.—A. I am not talking about Michigan. I have one Michigan point here—Detroit.

Q. Generally speaking, Parkersburg ships most of its oil to the South, does it not?—A. No, I do not think "generally speaking" would cover that.

Q. Well, it does frequently ship large amounts of oil to the South?—A. Parkersburg ships some oil to the South.

9914 Q. That I knew, but it ships a good deal more to the South than it does to the North, does it not?—A. I could not say without making inquiries of the Parkersburg refinery.

Q. Does it ship any to Boston?

Mr. ROSENTHAL. Or to Savannah or Charleston?

Mr. KELLOGG. You have asked him that.

A. I do not know as to Boston without making inquiries of the Parkersburg refinery.

Q. You do not think it does, do you?—A. I would not care to express an opinion on that. You said the other day that I had a brilliant imagination. I would rather not "imagine" any more.

Q. How do you know it does not ship any to Charleston?—A. I made inquiries of the Parkersburg refinery as to whether they had shipped any oil through the Virginia gateways in the years I mentioned, and they answered me they did not. So I had specific information on that point.

Q. You did that in order to controvert the Government exhibit here, did you not?—A. I did.

Q. Why didn't you find out whether they shipped into these points in order to sustain this exhibit which you put in?—A. I did not consider that was necessary.

Q. In other words, you think it did not make any difference whether Parkersburg shipped to these points or not?—A. I did not make any inquiry as to Boston.

Q. Did you as to these other points?—A. I did not as to the other points either.

Q. So you don't know whether it ships any oil to any of these points named in defendants' Exhibit 147?—A. Not without

9915 going to the Parkersburg refinery for the information.

Q. Now, isn't it a fact that Parkersburg and Marietta on other products, both to the South and to the North, take the same rates?—A. I do not know.

Q. Well, you said it does to the North.—A. You said "on other products." I have not investigated the tariffs on other traffic.

Q. You say Cincinnati is a gateway for Marietta. It is also a gateway for Parkersburg, is it not?—A. It could be; yes, sir.

Q. The same roads reach Marietta as reach Parkersburg?—A. As I recall there is only the B. & O. system there.

Q. It reaches both places?—A. No; there is another road out of Marietta. The Pennsylvania have a line in there.

Q. But the road that reaches Parkersburg also reaches Marietta?—A. Yes, sir.

Q. All the roads reaching Parkersburg reach Marietta?

Mr. ROSENTHAL. Reach them how—through Parkersburg?

Mr. KELLOGG. I am coming to that.

A. Parkersburg is on the B. & O. and the B. & O. have a line into Marietta.

Mr. ROSENTHAL. You mean have a line into Marietta how—by way of Parkersburg?

WITNESS. By Parkersburg, across the river.

Mr. KELLOGG. It would have to be on the same road.

Mr. ROSENTHAL. Not necessarily—not by a long shot.

Mr. KELLOGG. I don't know how a road could run from Parkersburg to Marietta and not reach both places.

Mr. ROSENTHAL. The B. & O. might reach Marietta and
9916 reach Parkersburg without connecting the two towns. That is conceivable. That frequently happens. You do not require much imagination to see that.

Q. Now, Mr. Felton, Cincinnati is as much a gateway to the South for Parkersburg as it is for Marietta, isn't it?—A. No; I should say not.

Q. Why not?—A. Because Lexington has always been a gateway on another basis of rates.

Q. Lexington has been a gateway on oil?—A. On all classes of traffic. The so-called Lexington basis prevails, which means the application of the Louisville rates, which, in many cases, or in some cases, are less than Cincinnati.

Q. Why should not that apply to Marietta?—A. Why, if Marietta could get to Lexington it would.

Q. Why can not Marietta get to Lexington, if it is on the B. and O. road, and only 12 miles from Parkersburg?

Mr. ROSENTHAL. It can through Parkersburg.

A. It could if it wanted to.

Q. Then there is no reason why Marietta should not have the same rates to Lexington as Parkersburg, is there?—A. So far as I know or so far as I can see there is no reason why Marietta should not have had a 9-cent rate to Lexington, if the roads wanted to make that rate.

Q. Yes, sir. In other words, you do not know any reason now, any more than you did when you were before Mr. Garfield explaining this matter, why Marietta should not have the same oil rates into the South as Parkersburg, do you?—A. Not if the Marietta people
9917 made application for them and went after them. Parkersburg people had nothing to do with the Marietta situation.

By Mr. ROSENTHAL:

Q. I show you petitioner's Exhibit 657. That purports to be an exhibit showing the comparative rates on sixth-class traffic and oil in carloads from Chicago, Illinois, and Whiting, Indiana, to various

points in the Central Freight Association territory during the year 1906, and was prepared by Mr. Boltz, who testified concerning the subject-matter thereof. Have you examined that statement?—A. I have looked it over.

Q. He shows that from Whiting and Chicago the oil rate was lower than the sixth-class rate to a hundred different towns that he has selected in Central Freight Association territory, does he not?—A. He does.

Q. When oil is classified it is generally classified in fifth class?—A. That is a proper expression.

Q. And the purpose of that exhibit is, manifestly, to show that with respect to these hundred different towns oil got a lower rate—not only a lower rate than fifth class, but a lower rate than sixth class.—A. That is the only purpose for which this statement could have been made.

Q. I show you defendants' Exhibit 148. What is that?—A. That is a table making a comparison of sixth-class rates and oil rates from Toledo, Ohio, in the same manner that petitioner's Exhibit 657 makes the comparison from Whiting.

Q. You have taken 120 towns in your exhibit, have you not, defendants' Exhibit 148, and compared the sixth-class rate with the oil rate from Toledo, and all of those 120 towns are in Central Freight Association territory?—A. Yes, sir.

9918 Q. And with respect to the oil rate from Toledo to those 120 towns in Central Freight Association territory, what is the fact as to whether the oil rate to those towns was lower than sixth class?—A. It is lower than sixth class.

Q. And are the 120 towns that you have selected as fairly representative towns in the Central Freight Association territory, in your judgment, as the 100 towns which Mr. Boltz selected in comparing the Whiting rate?—A. They are.

Mr. ROSENTHAL. I offer defendants' Exhibit 148 in evidence.

(A recess was here taken until 2 o'clock p. m., at which time the direct examination of the witness was resumed as follows:)

Q. What has been your position for many years with respect to putting oil on a class basis instead of a commodity basis?—A. I would always, since I have had anything to do with Standard Oil matters, have been glad to have seen it on a class basis.

Mr. KELLOGG. I object to that.

Q. Did you publicly and before certain Government officials take that position, before this suit was instituted and before any publication of any kind was made by the Government with respect to Standard Oil matters?

Mr. KELLOGG. That is objected to as incompetent and immaterial.

A. I did, before this suit was instituted; I did before Commissioner Garfield's report was published.

Q. When and where?—A. I made that statement before Mr.
9919 Garfield, in the spring of 1906. In making the statement, I said the Standard Oil Company would be glad to see oil rates on a fifth-class basis. I made it for the company.

Q. When was that? April, 1906, wasn't it?

Mr. KELLOGG. April, 1906? That was in reply to suggestions in his investigation, wasn't it?

A. I don't remember just where it came in, but I remember distinctly voluntarily making that statement to him.

Q. Government's Exhibit 625 purports to be a comparison of published rates on petroleum and its products, carloads, to points on the Rutland road, with the Boston rates. Have you caused that statement to be analyzed with a view of determining its accuracy and have you prepared a statement in that connection?—A. I have.

Q. I show you defendants' Exhibit 131-A. Is that the statement you have prepared in connection with Government Exhibit 625?—A. It is.

Q. In this Government Exhibit 625, which Mr. Schindler testified represented the lowest combination of rates that he could find from Toledo, Cleveland, and Oil City to points thereon named, one of the tariffs that he refers us to, from which he obtained the rates in question, is joint freight tariff I. C. C. No. A-1353. Have you examined that tariff with a view of showing whether a lower combination can be made than that made by Mr. Schindler?—A. I would like the Government exhibit, if you please, to make this comparison.

(The tariff was handed to the witness.)

Q. That tariff is the very tariff that Mr. Schindler used
9920 in making up Government Exhibit 625, and is referred to on Government Exhibit 625 as his authority, as I understand it. Is it?—A. That is correct.

Q. Now, please answer my former question?—A. I call your attention particularly to the rate quoted on petitioner's Exhibit 625 to Bellows Falls. It is shown at 44 cents.

Q. From where?—A. From Toledo, in comparison with the Boston rate, which is shown as 27 cents.

Q. From where?—A. From Toledo to Bellows Falls. In looking at the tariff, Lake Shore and Michigan Southern I. C. C. A-1353, I find, on pages 9 to 18 inclusive, an index of the towns and cities to which rates are shown in the body of the tariff. By referring to Bellows Falls I find the first index number, 256. That is the station number, not the page number.

Q. You are now ascertaining the rate from that tariff in the way that a rate man ordinarily would do so?—A. I am. By finding the corresponding index number, 256, I find that Bellows Falls is a station on the Fitchburg division of the Boston & Maine road, and that its rate basis is Boston.

Q. What language is there that indicates that?—A. The tariff, on page 20, reads as follows: "Boston & Maine." Then follows the following columns: "Index," "Station," "Rate," "Rate basis." Opposite Bellows Falls I find Index 256, and under the words "Rate basis" I find "Boston." Then, by referring to page 3 of the tariff, I find that the rate from Toledo to Boston is 27 cents. Therefore this tariff, on which the Government rely to make a rate of 44 cents, makes

a rate of 27 cents per 100 pounds from Toledo to Bellows Falls on oil via the Boston & Maine Railroad.

9921 Mr. KELLOGG. What rate does it make by the Rutland?

WITNESS. I will get to that.

Q. That is, with respect to the first reference?—A. The first reference.

Q. That is the first reference under Bellows Falls?—A. The first reference following Bellows Falls. Now, I find another reference.

Q. That is Boston & Maine delivery at Bellows Falls?—A. That is Fitchburg division, Boston & Maine, that I have just quoted.

Q. Go ahead.—A. Now, my next reference number is 831, as another way to find a rate to Bellows Falls, as shown in this tariff.

Q. From Toledo to Bellows Falls?—A. From Toledo to Bellows Falls. Following the same procedure which I have given before, I find on page 23, and under the same general heading that I gave a little earlier, that Index 831 is opposite the words "Bellows Falls, Vermont;" and under the "Rate basis" is shown Boston. Therefore, the rate on oil (this being an oil commodity tariff) from Toledo to Bellows Falls via the Connecticut River division of the Boston & Maine road, is 27 cents per 100 pounds. Pursuing my inquiry further, I find another index number——

Q. Under the head of "Bellows Falls" in the index?—A. Opposite Bellows Falls, Index 6437. By following that out I find that index number 6437, opposite Bellows Falls, on page 75, shows Bellows Falls, Vermont, as a Rutland Railroad point, at Rutland rates; and

9922 referring to page 3, I find that the Rutland rate from Toledo is 44 cents per 100 pounds. I then call your attention to a special notice on page 4——

Q. Now, up to that point, without the special notice, the rate would have been 44 cents via the Rutland road from Toledo to Bellows Falls?—A. That is true.

Q. And 44 cents is the rate stated in the Government exhibit as the correct rate from Toledo to Bellows Falls on the Rutland?—A. Yes, sir.

Q. That, however, now is modified by special note in what way? Call attention to the special note.—A. The special note on page 4, which is directly opposite the rates on page 3, and is printed in large type as compared with the other type on the page, reads as follows: "Special notice. Particular attention is called to the fact that many stations are reached by more than one route, and in some instances the rates differ. In such cases request shippers to designate route they desire shipments to be forwarded by; if they decline to do so, agent must be careful to forward it by a route that will give as low rates as any named, so as to avoid claim for overcharge."

Q. Mr. Schindler did not testify that he was giving the rates to the points named on the Rutland road by a Rutland Railroad delivery, but his testimony is that he was showing the lowest combination of rates that could be made to the particular point mentioned upon the exhibit. What do you say now as to the correctness of the rate which he has given to Bellows Falls, as to whether or not that is the lowest rate by any combination that could be made to the points named

on the Rutland road?—A. The very tariff which he uses for
9923 authority quotes lower than 44 cents from Toledo to Bellows Falls via the Boston & Maine Railroad; and it further provides that the 44-cent rate should not be applied unless the shipper specifically designated the route by which the 44-cent rate would be made.

Q. So that while the Government, in Government Exhibit 625, has named 44 cents as being the correct rate, yet in the very tariff from which they obtain that rate there are two other rates given of 27 cents between Toledo and Bellows Falls?—A. That is true.

Q. Both of which precede the alleged 44-cent rate?—A. Both of which precede the 44-cent rate.

Q. And the Government in naming a 44-cent rate has omitted all reference entirely to the special notice which you find in that tariff?—A. I do not know of anything in Mr. Schindler's testimony, and I do not find anything on the petitioner's exhibit, that makes any reference to the 27-cent rate as shown in this tariff.

Q. So that, as a matter of fact, the Toledo refiner would not have had the slightest difficulty in shipping to Bellows Falls on a 27-cent rate?—A. None in the least.

Q. And it would have been utterly inexcusable for the intelligent shipper to have shipped under a 44-cent rate when there were two other combinations there, published in the very tariff from which he got the 44-cent rate, giving him a 27-cent rate?—A. That is true.

Mr. KELLOGG. Now, that is objected to as simply Mr. Rosenthal
9924 stating his conclusions of what might happen or could happen or did happen, in his mind. He has stated exactly what he understands this tariff to show, and I object to these lectures on the rate, as to what somebody could have found or should have found.

Q. And not only that, Mr. Felton; the tariff which Mr. Schindler refers to, and which he used, gives Bellows Falls in the index in only one place, does it not?—A. That was the only place I could find it.

Q. Now, Bellows Falls, Vermont, appears on page 9 of the index to stations in this tariff as follows, does it not: "Bellows Falls, Vermont; 256–831–6437?"—A. That is correct.

Q. Now, a rate man, in seeking to ascertain the rate from Toledo to Bellows Falls, in opening this tariff, the first page, therefore, that would confront him with respect to the Bellows Falls rate would be page 256, would it not?—A. Index number 256; most certainly it would.

Q. Now, when you turn to page 256, there you get the 27-cent rate?—A. That is true.

Q. And then the next index number, or page, as I call it, after index number or page 256 is 831?—A. That is true.

Q. And then when you turn to that index number or page you again find the rate from Toledo to Bellows Falls stated as 27 cents?—A. That is true.

Q. And when you turn to index number 6437, which is the last index number, you find the rate via the Rutland road from Toledo to Bellows Falls stated as being 44 cents; but you find reference to that special note which qualifies it in the way that you have explained?

Mr. KELLOGG. That is objected to as restating what he
9925 has already stated.

A. I do not want to be technical about this, but I would like to be very exact about it. You do not find the reference to the special note at the time you are reading the 44-cent rate.

Q. You do not find the reference to the special note on index number 6437?—A. No, sir.

Q. Now, where do you find that special note?—A. You find it very clearly and prominently set forth on the top of page 4.

Q. Of this same tariff?—A. Of that same tariff.

Mr. ROSENTHAL. I offer in evidence Joint Freight Tariff I. C. C. No. A–1353, being the tariff referred to by Mr. Schindler as the basis of his authority.

Mr. KELLOGG. You do not want that whole tariff printed in the record, do you?

Mr. ROSENTHAL. No; if it may be understood that this offer makes it a part of the record it need not be printed, provided counsel for the Government will agree that we may use it as though it were printed.

Mr. KELLOGG. Well, you may produce it on any hearing in any court and use it just as though it was made a part of the record in this case.

Mr. ROSENTHAL. Can we get a duplicate of it?

WITNESS. I think we can find a copy of it. If it is not in our records, we can probably get it from Cleveland. We will ask the Lake Shore for it.

Mr. ROSENTHAL. If we can not, we will get the original.

Q. And the same situation as exists in connection with
9926 Bellows Falls exists in connection with Rutland in interpreting that tariff, does it not? Look at the tariff and see.—A. That same tariff, on page 32, index number 2218, shows that Rutland, Vermont, takes the Boston rate of 27 cents from Toledo on oil.

By Mr. KELLOGG:

Q. Now, Mr. Felton, the rate shown on Government Exhibit 625 from Toledo to Bellows Falls and Rutland and all other places there, by the Rutland Railroad, was 44 cents, was it not? I am talking of the rate by the Rutland Railroad.—A. I will have to make a general answer, if you please, and then I will get specifically to the question. You say "all the points." I have not looked up all of the points on the Rutland Railroad shown in the Government exhibit, because I knew we could very easily make lower rates than shown thereon; but I do find that via the Rutland Railroad the rate is 44 cents.

Q. Now, that is just as it is stated in the Government exhibit?

Mr. ROSENTHAL. Yes; but the Government exhibit does not call attention to the note.

Q. But the tariff which the Government exhibit cites does call attention to it. Now, I will come to that in a moment. The Rutland Railroad prior to 1906 did not prorate on oil to these places or any other place, did it?

Mr. ROSENTHAL. I shall have to object——

Mr. KELLOGG. It bears right on this.

Mr. ROSENTHAL. I know; but it is a general cross-examination on the prorating situation.

9927 Mr. KELLOGG. No; it bears right on your exhibit.

Mr. ROSENTHAL. It has not anything to do with the sources of his information.

Mr. KELLOGG. Yes; it has.

Mr. ROSENTHAL. In that connection?

Mr. ROSENTHAL. Yes; it has.

Mr. ROSENTHAL. Not a thing on earth.

Mr. KELLOGG. I think it has.

Q. Will you please answer?—A. Mr. Rosenthal came in there before I fully answered your first question.

Q. I would like to have you answer the second one now.

Mr. ROSENTHAL. What was the answer to the first?

A. I was going to say that while it named 44 cents via the Rutland, there was a declaration in the tariff that that rate was to be applied only at the shipper's option to pay the higher rate or to take some other delivery.

Q. But if the shipper shipped it by the Rutland Railroad he had to pay 44 cents, hadn't he, under that tariff?—A. He had, with the information before him that he could get there cheaper by another road.

Q. To two points; that is, Bellows Falls and Rutland?—A. I have only investigated as to those two.

Q. Now, it is a fact that prior to 1906 the Rutland Railroad did not prorate on oil to these places or any other, isn't it?—A. There were some limitations, but I do not recall the dates or periods.

9928 Q. About 1906? I do not mean the exact date, but it was after this subject was agitated.—A. I would not undertake to say when the Rutland road prorated or did not, unless I had their records before me.

Q. You remember that they put in prorating arrangements about 1906?

Mr. ROSENTHAL. We have another tariff making rates to those points.

A. That is the point, Mr. Rosenthal. I would not undertake to answer the question, because there were so many different ways of getting in there. There might be a rate by one road and one route and not by another, so I can not give you a specific answer.

Q. I am talking about the rate on the Rutland Railroad itself. I think you understand me, don't you?—A. No; I do not.

Q. Then I will tell you that I am talking about the rates on the Rutland Railroad. You understand that, don't you?—A. On the Rutland Railroad?

Q. Yes, sir; shipments by the Rutland Railroad.—A. What has that got to do with the rate from Toledo?

Q. Can't you ship from Toledo in connection with the Rutland road?—A. But if there is a tariff from Toledo that names a commodity rate to a point on the Rutland Railroad, the local qualification of the Rutland Railroad does not invalidate that tariff; not at all.

Q. But, Mr. Felton, you said that the rate to Bellows Falls and Rutland via the Rutland Railroad, shipped over the Rutland Railroad, was 44 cents. Is that correct or not?—A. I say that that tariff reads so that the note calls attention to the fact that there is a lower rate.

9929 Q. On some other road?—A. On some other road to the same point.

Q. Now, we understand that. Then I say it was a fact that prior to about 1906 the 44-cent rate applied on the Rutland Railroad, over that road, to shipments by that road?—A. Yes; if the shipper was foolish enough to use a higher rate.

Q. That is what I am getting at.—A. There was a 27-cent rate to the same point from Toledo, and what you are trying to show is that there was a high rate and no low rate. I come in and show that there was a low rate.

Q. If you will answer my questions, I will tell you what I am trying to do myself.

Mr. ROSENTHAL. I think he is answering your question.

Q. Now, since 1906 and at the present time the Rutland Railroad applies the Boston rate to all points on its line, doesn't it?—A. I could not say as to all points unless I saw the tariff.

Q. Now, in making up your table, 131–A, you did not take the rates to Bellows Falls and Rutland over the Rutland road, did you?—A. No; for good reasons. The Government says, "the lowest combination"——

Q. I asked you if you did.

Mr. ROSENTHAL. Go ahead and tell your reasons.

A. We looked for the lowest combinations. Mr. Schindler's testimony must be taken in connection with those exhibits.

Q. Wait a moment now.

Mr. ROSENTHAL. Go ahead.

A. When he put those exhibits in he said, "These are the lowest combinations I can find." Now, I come along and say that he

9930 is wrong.

Q. By that road?—A. The lowest combinations.

Q. Not at all?—A. When he gave his testimony he said "the lowest combinations I can find," and he was wrong, and I have shown that he was wrong.

Q. If you will just keep your temper and answer my questions—A. I am just as cool as I ever was in my life——

Q. ——and quit pounding the desk——A. ——and I have not lost my temper a particle.

Q. ——quit pounding the desk and we will get all this. Coming back to your exhibit, I say you did not take the rate over the Rutland road, but the rate over the Boston & Maine and over the Delaware

& Hudson. Is that correct?—A. I have to say in answer to that that I was looking for the lowest combinations.

Q. Did you take the rates over the Boston & Maine to Bellows Falls and over the Delaware & Hudson to Rutland?

Mr. ROSENTHAL. He has taken them all and explained them all from that tariff—every one of them.

Q. Wait a moment. In making your rate here to Rutland and to Bellows Falls, did you take the rates over the Boston & Maine and the Delaware & Hudson?—A. I will have to look at the sheet.

Q. Look at the sheet and then answer the question.—A. Do not think I lose my temper because I talk emphatically once in a while——

Q. Go ahead.—A. ——because I do not. I want to assure you of that.

Q. Go ahead.—A. The rate to Bellows Falls which I show
9931 here is made of a combination. This rate of 27 cents is made by taking the C., H. & D. tariff to——

Q. Name the railroads.—A. Mr. Kellogg, I have had an awful lot of these things, and I will have to take a little time to look them up. It is made by taking the C., H. & D. tariff, and here I have taken the rate shown in that. The only thing we have used there is that Lake Shore tariff.

Mr. LOWNDE. No; there are two routes from Toledo.

Q. How does the C., H. & D. tariff read?

Mr. LOWNDE. The C., H. & D. tariff does not make any stipulation. It is used in connection with the Despatch——

Q. Over what roads do you make these rates to Bellows Falls and Rutland?—A. Over the Boston & Maine, and the D. & H. to Rutland.

Q. Now, in making the rates here to Alburgh, Burlington, Shelburne, Vergennes, Salisbury, and Ferrisburg, you used the Grand Trunk combination that you testified to the other day, did you?—A. I used the lowest combinations I could find to make the points on the Rutland Railroad, regardless of route, just like any shipper would do to get his goods there.

Q. Wait a minute. You used to those points the Grand Trunk tariff from Toledo which you testified to the other day, didn't you?—A. Where that Grand Trunk tariff is shown on there.

Q. Now, to which one of those places in that did you use the Grand Trunk?

Mr. ROSENTHAL. Isn't it all shown on the exhibit?

A. The Grand Trunk tariff is used directly to Alburgh and Bur-
lington, and is used in connection with Rutland Railroad
9932 local rates to some basing point on the Rutland road, to Shelburne, Vergennes, and Ferrisburg.

Q. Yes; and if that Grand Trunk tariff should be held not to apply, then your statement is wrong, isn't it?—A. I will cross that when I reach it. That Grand Trunk tariff is filed with the Interstate Commerce Commission and does apply.

Q. Mr. Schindler gave the correct rates to those places unless that Grand Trunk tariff applies, didn't he?

Mr. ROSENTHAL. We do not know that. That is the one that we have investigated.

A. Not in connection with his specific declaration that he had used the lowest combinations.

Q. I am not talking about Bellows Falls and Rutland, but about four of five other places there that I have just named to you. A. I could not answer that question without checking them all up.

Q. You don't know that he has not?—A. I will say that I have used, to some of those places, that Grand Trunk tariff.

Q. Yes, that is what I thought.—A. Yes, sir; it is a good tariff.

By Mr. ROSENTHAL:

Q. And those places you show on the face of the exhibit?—A. Yes, sir.

Q. By specific reference to that tariff?—A. By specific reference to the Special Commodity Tariff filed with the Interstate Commerce Commission, issued for the express and sole purpose of making
9933 rates on oil from Toledo to points in New England.

Q. Mr. Felton, many years of your practical railroad experience were in and around Chicago, as I understand you have heretofore testified, so that you are entirely familiar with the early freight situation in Chicago, are you?—A. Yes, sir.

Q. Are you familiar, as a matter of personal knowledge, with the growth and development of the Chicago switching district?—A. I am.

Q. Originally, how were freight rates made—from Chicago proper?—A. Well, originally, there only was a Chicago proper, and the rates were made to and from Chicago.

Q. And as time went along, how was that changed?—A. As Chicago grew, the population extended its areas. Manufactories and industries of various kinds sprang up on its outskirts, and as the growth went on, so-called belt or terminal railroads were built, not only for the purpose of more advantageously and more economically reaching those industries, but of affording opportunities for the construction and the erection of others.

Q. That is, there grew up around Chicago a great many little industrial towns that were connected by these belt line railroads?—A. That is true.

Q. And was that encouraged by the railroad companies, and if so, why?—A. That was a normal condition. I will not say that it was forced upon the railroads. It was a condition that they very willingly accepted, because it brought into Chicago a vast amount of traffic. It added to Chicago's commercial importance and to its manufacturing importance. Originally Chicago was not
9934 expected to be very much of a manufacturing centre. Away back in the old days it was largely a grain and live stock market; but these factories kept coming in, and the railroads continued to afford facilities—built belt roads or encouraged belt roads—until

finally, as you say, a great circle of manufacturing towns sprang up on the outskirts of Chicago.

Q. The manufacturer in that way getting cheaper manufacturing facilities?—A. The manufacturer obtained his land, of course, very much cheaper at these outlying towns and junctions than he could within the city. In fact, he could not get the land within the city. The railroads were saved the haul from the junction point where the factory was located on their own road—they were saved the haul into Chicago over their congested terminals, and the manufacturer was able to locate with less expense, and so it became a matter of mutual convenience and benefit.

Q. And the manufacturer, locating in these industrial towns lying around Chicago, therefore not only got the benefit of cheaper sites, but he also got the benefit of the competition in connection with freight rates due to the vast number of competing railroads that centered at Chicago?—A. That is a correct statement.

Q. Do you remember one of the first belt-line roads that was constructed around Chicago?—A. One of the earliest that I recall was a road that at that time bore the name of Calumet & Rock Island, afterward changed to the Chicago & Calumet Terminal, as I recall it, and now the Chicago Terminal Transfer Railroad. I think I have those names right.

Q. Can you describe generally the route followed by the
9935 Chicago Terminal or the belt-line road?—A. It was added to from time to time and year to year as manufactories grew and new ones were encouraged until to-day, as I recall it, or during the period of 1903 and '4, it extended from Mayfair on the northwest——

Mr. MILLER. The junction of the Chicago & Northwestern and the Chicago, Milwaukee & St. Paul?

WITNESS. The junction of the Chicago & Northwestern, and extended all the way around the city of Chicago, crossing the Indiana State line and going back into East Chicago—no; all the way around Chicago and going over the Indiana State line to Whiting; tapping almost every north-and-south and east-and-west railroad in its course; that is, forming junction points with such railroads.

Mr. MILLER. Does it run from Whiting thence further and up to South Chicago?

WITNESS. Yes; it goes through South Chicago.

Mr. MILLER. To the city of Chicago?

WITNESS. In order to get out of South Chicago, Illinois, via the Chicago Terminal Transfer, you have to go into Indiana and come back into Illinois.

Mr. MILLER. Does it go around through Whiting?

WITNESS. Yes.

Mr. MILLER. And then back into Illinois?

WITNESS. Yes, sir.

Mr. MILLER. The terminus of the south end of it is South Chicago in the city and the north end of it is at Mayfair?

A. That is correct; yes, sir.

Q. I show you defendants' Exhibit 149. Please state what that is.—A. Defendants' Exhibit 149 is a list of railroads with
9936 which the Chicago Terminal Transfer Railroad connects and the junction points. It also shows on the second sheet a map of the Chicago Terminal Transfer Railroad, which shows that the statement I have previously made in that connection is correct.

Q. It gives there a list of the towns, their locations, and also has attached to it a map of the Chicago Terminal Transfer line, has it not?—A. Yes, sir.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 149.

Q. Now, Mr. Felton, what do you mean by the Chicago switching district?—A. The Chicago switching district embraced the points to and from which Chicago rates applied, and the district embracing the points from which almost all of the Chicago railroads were willing to absorb switching charges of the belt or other railroads where it was necessary in order to apply Chicago rates to or from manufactories or industries of all kinds located within that district.

Q. And in a general way the Chicago switching district comprises these points named on defendants' Exhibit 149, and as shown on the map attached to that exhibit?—A. That is true.

Q. Does the Belt Line also connect with the Cleveland, Cincinnati, Chicago & St. Louis Railway, known as the Big Four route?—A. No, sir; it does not.

Q. How does the Big Four get into Chicago?—A. The Big Four gets into Chicago over the Illinois Central from Kankakee.

Q. And the Illinois Central, then, and the Big Four, by coming over that route, connect with the Belt Line at Riverdale, do they not?—A. That is one of a number of points; yes, sir.

9937 Q. How far east do the Chicago city limits extend?—A. Right up to the Illinois-Indiana State line.

Q. Whiting, where the Standard Oil refinery is located, is how far east of that Illinois-Indiana State line?—A. About one and one-half miles.

Q. And about one and a half miles from the eastern limits of the city of Chicago, is it not?—A. That is correct.

Q. Is Whiting and has it been for the past twenty-five years in the the Chicago switching district?—A. I am not certain as to the number of years, but Whiting has always been, in my railroad experience, considered within the Chicago switching district.

Answer. I am not certain as to the number of years, but Whiting has always been, in my railroad experience, considered within the Chicago switching district.

Q. The refinery at Whiting, on the record in this case, was completed about 1891. I think the record shows that the first shipments were made about December, 1890. During all of the time since December, 1890, and for some time before, has Whiting been within the Chicago switching district?—A. It has.

Q. Speaking of the Chicago switching district, have you a map of that district?—A. I have.

Q. Is it found in defendants' Exhibit 150?—A. It is.

Q. That is a sheet issued by the Chicago & Northwestern Railway Company in 1902, is it not?—A. Yes, sir. This is offered to show

that there was a distinct area known to the railroads as the switching district.

Q. As the Chicago switching district?—A. As the Chicago switching district.

Q. And that is shown on page 3 of defendants' Exhibit 150, is it?—A. That is true.

9938 Q. And is Whiting shown to be within that switching district?—A. It is.

Q. There are certain wavy lines out there to one side on that map that represents the lake, do they not?—A. Yes, sir.

Q. Then you show Whiting and South Chicago on the south, and Rogers Park up on the north, the names extending out into these wavy lines?—A. Yes, sir.

Q. Whiting there is right at the lower right-hand corner of that map?—A. Not exactly at the lower, but in the right-hand corner.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 150.

WITNESS. I would like to say in connection with that exhibit that I offer the Chicago & Northwestern document on that subject because I was unable to find a map that showed the district quite so well as that on any other of the southern roads. I was informed that they had such documents, but I could not seem to find one, so I accepted that.

Q. And that correctly represents it?—A. Yes, sir.

Q. I also show you defendants' Exhibit 151, being a tariff of the C., B. & Q. Will you explain briefly what that is?—A. This is a printed eight-page tariff of the Chicago, Burlington & Quincy Railroad Company, issued on August 15, 1893, Tariff No. G. F. O. 6236, giving "Instructions regarding the absorption of switching charges at Chicago."

Q. Does it contain a list of manufacturing institutions within the Chicago switching district, in which were applied Chicago

9939 switching rates?—A. It contains a large list of such concerns; yes, sir.

Q. Naming them?—A. Naming them.

Q. And among others the Standard Oil Company?—A. It gives the name of the firm, the location, as to street or some city location. It gives the railroad on which the industry is located, the business in which the industry is concerned, and the amount of switching charges per car that will be absorbed by the Chicago, Burlington & Quincy Railroad Company.

Q. Do you know about the time when the Chicago railroads began issuing application sheets applying Chicago rates by printed application sheets to Whiting and these other industrial points named?—A. The question of absorbing Chicago switching—I will have to answer that a little in a general way.

Mr. KELLOGG. Now, wait a minute. Have you a tariff for that, or an application sheet that you are testifying from?

Mr. ROSENTHAL. Oh, no.

WITNESS. It was my idea, Mr. Kellogg, first to testify, in answering that question, to what I personally knew happened in Chicago in the early part of the territory that the question covers, and to follow it up specifically with tariffs from which I will read, or which we will offer in evidence.

Q. Go ahead, Mr. Felton.—A. The question of absorption of Chicago switching charges was first a matter of competition, then a matter of agreement as between the roads, the practice being quite uniform and universal; and then later on it was covered by application sheets setting forth generally and broadly that Chicago
9940 rates would be made to and from points within the switching district, or to and from points on certain of these belt railroads; and then as the time went on these application sheets first named no tariffs at all, then a few, and then quite a number. That is the evolution of the method of absorption.

Q. So that prior to the issuance of the application sheets it had been the custom to apply Chicago rates to these various points within the switching district?—A. Yes, sir.

Q. And prior to that the matter had been one of competition between the railroad companies?—A. That is true.

Q. Now, South Chicago, as shown within that switching district, is within the city of Chicago and a part of the city of Chicago, is it not? It is, as a matter of fact.—A. I understand that it is.

Q. There are large manufacturing industries located at South Chicago, and have been for many years, have there not?—A. Yes, sir.

Q. Among others, the large steel plant of the Illinois Steel Company, now a part of the United States Steel Company?—A. Yes, sir.

Q. Employing many thousands of men and turning out thousands of tons of product every year?—A. Yes, sir.

Q. The Belt Line road runs to South Chicago, does it not?—
9941 A. You were speaking of the road——

Q. The C. T. T.—A. Yes, sir.

Q. In transporting products by freight from South Chicago via the Terminal Transfer Line, what is the route that is taken in connection with Illinois traffic?—A. The cars would be moved from South Chicago, Illinois, through a small portion of the northwest corner of the State of Indiana, around through Whiting; then down just west of East Chicago, going back into the State of Illinois near Hammond, Indiana; thence on into Illinois.

Mr. KELLOGG. One moment. That is objected to as immaterial and irrelevant.

Q. And that has been the manner in which that tremendous traffic has been moved from South Chicago, reaching Illinois points, for many years, is it not?—A. When handled by the Chicago Terminal Transfer. That is true on traffic handled via the Chicago Terminal Transfer Railroad.

Q. So, on all of that large amount of traffic so handled the traffic moves from South Chicago, Illinois, into Indiana, through Whiting,

a mile and a half across the line, and then back into Illinois at Hammond, Indiana, and on to the various Illinois points?—A. That is shown, as you state, by the published and authorized map issued by the Chicago Terminal Transfer Railway Company, from which I read.

9942 Q. Before the days of the printed application sheet, was it or was it not the common custom of the railroads in and around Chicago to apply Chicago rates, by virtue of such custom, to these little industrial towns that were within the Chicago switching district, and had that been the custom for a great many years before 1901?

Mr. KELLOGG. I object to that as incompetent and immaterial.

A. Speaking from my own personal knowledge, having to do with traffic originating at and coming into Chicago, during a period covering the years from 1882 to 1897, that is correct.

Q. Were application sheets such as you have indicated, applying Chicago rates to these industrial points about Chicago, including Whiting, Indiana, generally issued by the railway companies running into Chicago?

Mr. KELLOGG. That is objected to. The application sheets are the best evidence. Let us see what application sheets he refers to.

A. The common practice, to which I have previously testified, was quite generally sanctioned later on by the issuance of application sheets.

(Papers marked Defendants' Exhibits 152 and 153.)

Q. I show you defendants' Exhibits 152 and 153. Please state generally what they are.—A. Defendants' Exhibit 152 is Santa Fe system tariff No. 5852–A; I. C. C. No. 1499. It reads: "Atchison, Topeka and Santa Fe Railroad, in connection with"—a number of Chicago switching roads of the kind I have previously named,

9943 including the Chicago Terminal Transfer Railroad. It says that it applies on classes and commodities, excepting coal, coke, grain, and a few other things, but the exception does not include petroleum oil. It was issued January 18, 1902, effective January 25, 1902. It then has four columns of information. The first column reads "Between;" the second reads "Via Route No.;" the third column simply has the word "and" in it; the fourth column is headed "Carloads. Rate to apply."

Q. That is an application sheet, is it?—A. It provides that current tariff rates in effect from and to Chicago, subject to some rates which are given as minima shall apply between a number of these outlying Chicago switching points, including Whiting, Indiana, and (I now quote from the tariff) "Stations on or reached via A. T. & S. F. Ry. and connections."

Q. Well, those tariffs issued by the Santa Fe road, defendants' Exhibits 152 and 153, apply, generally speaking, Chicago rates to points named within the Chicago switching district?—A. That is true.

(Papers marked Defendants' Exhibit 154, consisting of 16 sheets.)

Q. I show you defendants' Exhibit 154. Is there an application sheet of the Santa Fe road, with amendments thereto, effective February 15, 1904? Look that over this evening, Mr. Felton, and answer that question in the morning.

(An adjournment was here taken until the morning of Wednesday, October 7, 1908, at 10.30 o'clock.)

9944 ROOM 677, FEDERAL BUILDING, CHICAGO, ILL.,
Wednesday, October 7, 1908—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison; on behalf of the defendants, Mr. Moritz Rosenthal, Mr. John S. Miller, Mr. Chauncey W. Martyn.

Mr. KELLOGG. Mr. Rosenthal, before you go into your testimony this morning I would like to have settled that question of petitioner's Exhibits 655 and 656, Mr. Boltz' exhibits which did not have the tariff references attached thereto. Mr. Boltz is going away this afternoon, and, as I understand, the references which he has attached are satisfactory.

Mr. ROSENTHAL. I will withdraw my objection to that if you withdraw your objection to the last exhibit which we had before us the evening before, the number of which I have forgotten, upon the ground that Mr. Felton's evidence was secondary.

Mr. KELLOGG. I don't think you ought to make that a condition on every other document Mr. Felton puts in. If we do not furnish tariff references, then you said you would move to strike them out. Now, you ought not to make that conditional on the question of secondary evidence as to some other document. That is not fair at all.

9945 Mr. ROSENTHAL. In the main, most of the evidence on both sides was secondary; and now when an exhibit which is peculiarly obnoxious to you comes along I don't want you to take the position that it is objectionable because the evidence in part is secondary.

Mr. KELLOGG. Mr. Rosenthal, I have let every one of your exhibits as to rates go in—every one of them. Some of them did not have the tariff references opposite each.

Mr. ROSENTHAL. What was the number of that Felton exhibit?

Mr. KELLOGG. I have got it right here and I am coming to that in a minute.

Mr. ROSENTHAL. Let me see it.

Mr. KELLOGG. But I do not think you ought to object to these Exhibits 655 and 656 on that ground, because we have given you the tariff references, and I understand they are satisfactory.

Mr. ROSENTHAL. I am willing that the record should show, without reference to your objection to defendant's Exhibit 143 (so that we cross one bridge at a time), that my motion to strike out those two

Boltz exhibits (petitioner's Exhibits 655 and 656) upon the ground that the tariff references were not furnished, be withdrawn. Any other objections, however, that I specifically made to the exhibits at the time stand, excepting that.

Mr. KELLOGG. You objected because they were secondary, on the ground that the tariff references were not furnished, didn't you?

Mr. ROSENTHAL. No; I think not.

9946 Mr. KELLOGG. Now, as to defendants' Exhibit 143, you say you have some other exhibits coming in that will show specifically the shipments in each separate territory. Now, my sole objection to that is that it seems to me the exhibit should show those things that I ask, and I do not know what officer to subpœna to get those things; and if you will bring the man who knows about that he can give me the other information. I haven't any idea whom to subpœna. I can't chase all over the United States to get men. If you will produce any other documents that show substantially that information, I shall certainly not raise any objection on account of its being secondary. If you will pass that for the present, I think we can——

Mr. ROSENTHAL. We can give you the names of the men from whom Mr. Felton obtained this information, and the sources of their information, and can give you the books from which they obtained the information, and give you access to those books, or produce the books in court upon which their information is based, showing the shipments. What you wanted here the other day was to have us add certain other things to this exhibit, in which event you indicated that you would withdraw your objection. Now, this exhibit does not pretend to cover some of the things that you requested. It covers only what it purports to cover.

Mr. KELLOGG. That is true.

Mr. ROSENTHAL. We will be very glad indeed to give you the names of the men from whom Mr. Felton got the information; to give

9947 you by title and description the books from which they got it; and, if you wish us, to produce those books in court, showing the basis of that information.

Mr. KELLOGG. Or furnish the information in lieu of the books?

Mr. ROSENTHAL. Yes, sir.

Mr. KELLOGG. With that understanding, I will withdraw my objection.

HENRY E. FELTON recalled, and his direct examination resumed, as follows:

By Mr. ROSENTHAL:

Q. I show you Government's Exhibit 549, being Chicago & Alton Tariff I. C. C. No. 981. What is that?—A. It is in effect an application sheet applying Chicago rates from points in the so-called Chicago Switching District, applying particularly to points on the Chicago Terminal Transfer Railroad Company.

Q. Is Whiting named as one of the points from which Chicago rates apply?—A. Whiting is named; but it is shown as being in

Illinois. I understand we have all agreed previously that that was an error in printing, and that it should read "Indiana."

Mr. KELLOGG. Yes; that is true.

Mr. ROSENTHAL. Then I will not stop to show that further.

Mr. KELLOGG. That was in the record.

Q. What is the date of 981?—A. 981 was effective August 13, 1901.

9948 Q. That is the first application sheet of the Chicago & Alton road applying Chicago rates from Whiting that you find, is it not?—A. It is the first one that I have been able to find.

Q. The first one, I mean, that you have found that was filed with the Interstate Commerce Commission?—A. Yes, sir. I have made diligent inquiries all along for that.

Q. How long did that continue effective?—A. I could not say until I had some subsequent document. It does not show hereon when it was.

Q. That appears to have been canceled by Chicago & Alton I. C. C. 1203. Have you that, Mr. Durand?

Mr. DURAND. That is one of those that was returned to the Interstate Commerce Commission, and may be in Mr. Sims' hands. I will see if we have got it, but I doubt that we have.

Mr. ROSENTHAL. It is an exhibit in this case.

Mr. DURAND. I know, but a copy was substituted, and you will find it in the typewritten record. You have that, and so have we a copy of it.

Mr. KELLOGG. That is one of those that the original was returned.

Mr. DURAND. I will see if Mr. Crossland has actually got it now. It may have been returned to Mr. Sims. It may be in Mr. Crossland's hands at this time.

WITNESS. While we are waiting, if I may be permitted to say, on a little closer inspection of this I. C. C. No. 981, issued by the Chicago & Alton Railway, I find its scope in the application of Chicago rates, from points in and around Chicago, is very much greater

9949 than I thought it was on first glancing at it. It not only shows the Chicago Terminal Transfer Railway Company has a road from the stations on which Chicago rates apply, but it also shows the Belt Railway of Chicago, the Baltimore & Ohio, and a great many other roads to which the principle of the application of Chicago rates is given.

Q. Now, does that name any specific tariffs upon its face?

Mr. KELLOGG. The document shows for itself, doesn't it?

A. It does not.

Q. And with respect to those early application sheets it is true, is it not, that quite generally, if not universally, they were mere blanket application sheets, without attempting specifically to name any tariffs?

Mr. KELLOGG. Now, one moment. That is objected to as incompetent and immaterial. The application sheets should be named and

an opportunity given to inspect them if the witness wishes to testify to the substance of them as secondary evidence.

A. That is true, in answer to your question.

Q. Now, my question a moment ago was, How long did Chicago & Alton I. C. C. 981 continue in effect?—A. Chicago & Alton I. C. C. 981 was canceled by Chicago & Alton I. C. C. 1203, effective June 9, 1903.

Mr. KELLOGG. I don't see the necessity of going over that. That was all gone over, and they were all put in evidence. It seems to me it is taking up time for nothing.

Mr. ROSENTHAL. Put in evidence with Mr. Durand's interpretation. I propose——

Mr. KELLOGG. No; simply put in evidence.

9950 Mr. ROSENTHAL. I propose now to have our interpretation placed upon these application sheets.

Q. Does that continue the application of Chicago rates from Whiting?—A. It does.

Q. Have you any application sheets that were issued by the Chicago Great Western Railway, applying Chicago rates to Whiting?—A. I have.

Q. I call your attention first to Chicago Great Western I. C. C. 1273, effective July 18, 1901. Is that the first Great Western application sheet that you find that was filed with the Interstate Commerce Commission?—A. It is the first Chicago Great Western application sheet that I have; but it indicates by tariff numbers contained on its face that there was a previous one filed with the Commission.

Q. Does that specifically name tariffs, or is that also a blanket application sheet?—A. It does not specifically name tariffs.

Q. And what does it apply?—A. It reads as follows. After showing a number of so-called Chicago switching points, including Whiting, Indiana (I read from the tariff): "Chicago tariff rates will apply, subject to the following minimum through rates." Then appear some minimum figures.

Q. How long did that application sheet of the Great Western continue in effect?—A. It was canceled by I. C. C. 3445.

Q. Of the Great Western?—A. Of the Chicago Great Western, effective October 21, 1905.

Q. Now, this last application tariff of the Chicago Great
9951 Western, which was filed in October, 1905, contains a long list of tariffs, does it not, on the back?—A. It does.

Q. Do you find any language there limiting the application of Chicago rates from Whiting to those tariffs specifically named on the back thereof?

Mr. KELLOGG. One moment. I think that the best evidence of that is the tariff, and the witness ought to be confined to the language of the tariff as nearly as he can.

Mr. ROSENTHAL. All right.

Q. Those tariffs that are named upon the back of that sheet, how much assistance would they be to a shipper as a practical proposi-

tion in ascertaining what particular tariffs were referred to by the application sheet?

Mr. KELLOGG. That is objected to as a conclusion of the witness.

A. Very little.

Q. Why?—A. For the reason that no information is given other than the road, the name of the road or the traffic association issuing the tariff and the tariff number.

Mr. KELLOGG. What is the language at the head of the tariff? Why don't you put it in?

Mr. ROSENTHAL. We are going to put in the tariff. I offer in evidence Chicago Great Western tariffs I. C. C. 1273 and I. C. C. 3445, marked defendants' Exhibits 155–A and 155–B.

Mr. KELLOGG. I want to ask a question about these, so I can enter an objection. Referring to the last application sheet, Exhibit 155–B, does it not, at the head of the list of tariffs, say "Chicago rates referred to on page 1 will be found in the following described tariffs and amendments or reissues?"

9952 Mr. ROSENTHAL. I object to that. The tariff itself is the best evidence of what it says.

Mr. KELLOGG. Well, he read from it.

Mr. ROSENTHAL. I know, but you can not at this stage cross-examine him concerning the meaning of those application sheets——

Mr. KELLOGG. I am not going to.

Mr. ROSENTHAL. And object to my undertaking to examine him upon the direct as to our interpretation thereof.

Mr. KELLOGG. I am not going to. Have you examined to see whether there were any amendments to the first one, 155–A, which was effective July 18, 1901?

WITNESS. I do not know of any amendments.

Mr. KELLOGG. Did you examine to see if there were any?

WITNESS. I did not.

Mr. KELLOGG. These are objected to as irrelevant and immaterial.

Q. Have you application sheets of the Chicago, Milwaukee & St. Paul Railway applying Chicago rates from Whiting and other points within the switching district?—A. I have one before me.

Q. I. C. C. A–6102?—A. Yes, sir.

Q. What is the date of that?—A. It is effective April 6, 1903.

Q. That is an application sheet of the Milwaukee road, is it?—A. It is.

Q. Filed with the Interstate Commerce Commission, applying Chicago rates from Whiting?—A. It so reads.

Q. And was any supplement issued?—A. I have attached

9953 hereto the file that I have, as supplement 2 and supplement 3 attached to it.

Q. Does supplement No. 2 have any reference to Whiting? Were there any supplements issued to the St. Paul application sheet?—A. 6102, do you mean?

Q. Yes.—A. Yes, sir; I have already testified I have supplements 2 and 3.

Q. What dates did they become effective?—A. Supplement 2, May 18, 1903; supplement 3, November 16, 1903.

Q. Does supplement No. 2 contain any reference to specific Chicago tariffs—or supplement No. 3—either one?—A. All I find is a reference to some other St. Paul issue with regard to rules and regulations, weights, etc.

Q. Now, that supplement No. 2, May 18, 1903, of the St. Paul road, specifically provided, did it not, for the application from Whiting, Indiana, to stations on the C. M. & St. Paul Railway and other roads, the same rates as applied from Chicago, Illinois, without making any reference whatever to any specific tariff?—A. Yes, sir.

Mr. ROSENTHAL. Please mark Chicago, Milwaukee & St. Paul application sheet A–6102 as defendants' Exhibit 156–A, and the supplement 156–B.

Mr. KELLOGG. Are these offered?

Mr. ROSENTHAL. Yes; I offer them in evidence.

Mr. KELLOGG. They are objected to on the same ground.

Q. Have you any application tariffs of the Chicago, Burlington & Quincy Railroad applying Chicago rates from Whiting?—

9954 A. I have.

Q. Will you produce them, please?—A. I have C., B. & Q. I. C. C. No. 7773.

Q. What is the date that that became effective?—A. November 1, 1906, on interstate traffic. There are two dates effective.

Q. You have some earlier than that, have you not? Well, let us go right along with that.—A. Yes. This tariff seems to have been limited to the Chicago Junction Railway.

Q. Yes, sir; and applies C., B. & Q. Chicago rates from Whiting. Does it name any specific tariffs?—A. No, sir.

Q. Have you any other C., B. & Q. application tariffs?—A. I have C., B. & Q. I. C. C. No. 2965, effective May 24, 1901.

Q. And how long did that continue in effect?—A. That was canceled by C., B. & Q. I. C. C. 4721, effective December 28, 1903.

Mr. MILLER. When was 2965 effective; the one you have there?

WITNESS. 2965 was in effect until December 28, 1903.

Q. How long did the latter application tariff continue in effect in 1903?—A. I have nothing here that shows the date on which it was canceled, if, indeed, it is not in effect to-day.

Q. So that the C., B. & Q., from 1901 on, has issued these several application tariffs applying Chicago rates from Whiting, as have the other roads that you have already mentioned?—A. Yes, sir.

Mr. ROSENTHAL. I offer them in evidence and ask that they be marked Defendants' Exhibits 157 A and B.

(The papers were so marked.)

9955 Mr. KELLOGG. Same objection.

Q. Now, have you C., B. & Q. tariff G. F. O. 1247, effective January 10, 1896, filed with the Interstate Commerce Commission April 4, 1904?—A. I understand that was filed with the Interstate

Commerce Commission, under the number I. C. C. 17209; but the only reference to that fact on this tariff is a pencil notation.

Q. First describe generally that C., B. & Q. tariff so issued in 1896.—A. G. F. O. 1247 is a tariff issued by the Chicago, Burlington & Quincy Railroad, applying on petroleum oil from Chicago to Illinois stations on the C., B. & Q. Railroad, effective January 10, 1896. It contains quite an extensive list of Chicago, Burlington & Quincy stations, covered by an index in the first part of the tariff. To some of the towns named in the tariff specific rates are given. To other towns there are references like the following (I quote from the tariff): "See Switching Tariff;" "see Special Tariff."

Q. What towns are those?—A. Opposite the heading "See Switching Tariff" are a number of towns like Hawthorn and Millard avenue, Chicago, evidently Chicago switching points. Opposite the words "See Special Tariff," I find East Clinton and Fulton.

Mr. KELLOGG. Illinois, you mean?

WITNESS. Those are all supposed to be Illinois towns. That is the way it reads on its face. I am giving now a list of the towns following which appear the words "See Special Tariff:" Peoria, Quincy, Moline, Rock Island, East St. Louis.

9956 Q. Those towns are all listed in different places on that long list of towns, are they?—A. They are.

Q. And opposite each one of them is the notation "See Special Tariff?"—A. That is correct.

Q. And that C., B. & Q. tariff is a tariff that covers only petroleum rates from Chicago to the towns therein named?—A. It so reads.

Q. Now, how do you connect that up with Whiting, Mr. Felton, in getting a rate from Whiting?—A. I would like to see those application tariffs.

Q. I mean generally speaking, by the issue of the application sheets which you have heretofore described, of the C., B. & Q.?—A. That is correct.

Mr. KELLOGG. That is objected to, as the application sheets are the best evidence as to whether they connect Whiting with that tariff or not.

Q. So that tariff of the C., B. & Q., containing those notations "See Special Tariff" in all of those instances, directs the attention of the shipper to the fact that there is a petroleum tariff from Chicago to the points therein named, including East St, Louis, other than that particular tariff upon which those notations are, does it not?

Mr. KELLOGG. That is objected to. The tariff is the best evidence.

A. That is true. Furthermore, this tariff does not name a rate to the point opposite which the words "See Special Tariff" appear; consequently, the shipper would be obliged to make inquiry or to seek some other tariff in order to ascertain what the rate was from Chicago to those points.

9957 Q. I see. So with that tariff before him the shipper, in attempting to make a shipment from Chicago or from Whiting to East St. Louis, would of necessity have to inquire of the C., B. & Q. for the special tariff therein referred to in order to get a rate at all?

Mr. KELLOGG. Same objection.

A. That is true.

Q. I show you Government's Exhibit 573——

Mr. KELLOGG. I would like to ask him a question about that tariff that he read from.

Mr. ROSENTHAL. All right.

Mr. KELLOGG. Just one question. This tariff of the Chicago, Burlington & Quincy, which was dated January 10, 1896, is a tariff from Chicago, Illinois, to stations in Illinois?

WITNESS. That is true.

Mr. KELLOGG. All of the points being in Illinois?

WITNESS. Yes, sir.

Mr. ROSENTHAL. Including East St. Louis?

Mr. KELLOGG. Including East St. Louis; yes.

WITNESS. Yes, sir.

Q. And that you have already explained; you connect up with Whiting by the use of the application sheets that you have already testified to?—A. Yes, sir.

Q. I call your attention to Government Exhibit 571, being amendment 3½ to C., B. & Q. I. C. C. 4721, the same being an amendment to the C., B. & Q. application sheet applying Chicago rates from Whiting. When Mr. Durand was upon the stand he took pains to call attention to the fact that among the tariffs specifically named in Government's Exhibit 571 was C. & St. L. F. A. No. 3, that being Tariff 24 of the Chicago & St. Louis Freight Association upon which the Government bases its 18-cent rate from Whiting to East S. Louis. Do you find from an examination of 571 specific reference to any other Chicago, Burlington & Quincy tariff which makes a rate other and different than 18 cents between those points?—A. I do find such a tariff, the reference to other rates being made through supplements to said tariff.

9958

Q. Now, will you point that out?—A. Among the list of tariff numbers appearing on amendment 3½ to C. B. & Q., I. C. C. 4721, which I understand is Government Exhibit 571, I find No. 4234.

Q. As one of the tariffs thereon listed?—A. That is correct.

Q. Now, what is 4234?—A. 4234 I. C. C. is a joint tariff issued by the C. B. & Q. Railroad between St. Louis, Missouri, and Illinois stations on the C. B. & Q. road. On page 3 of that tariff it gives reference to a number of tariffs naming East St. Louis rates. Amendment No. 2 to 4234 adds to the list of the East St. Louis tariffs, and makes direct reference to C. B. & Q. G. F. O. No. 1059, date 1904.

Q. That is Government Exhibit 573?—A. Government Exhibit 573, if that is correct, as being a Chicago-East St. Louis tariff. By referring to C. B. & Q. G. F. O. No. 1059, issued January 1, 1904, I find it names a rate from Chicago under the heading "From;" St. Louis under the heading "To;" the word "all" under the heading "To whom given;" "Kind of freight," oil, various kinds, petroleum; and under the "Rate in cents per 100 pounds" I find "6,"

9959 which thereby makes a rate of 6 cents, Chicago to East St. Louis, account of all shippers.

Q. So that on amendment 3½, being Government's Exhibit 571, you find a specific reference to a tariff making a 6-cent rate from Chicago to East St. Louis, as just explained by you?

Mr. KELLOGG. That is objected to because he did not say he found such reference, and it is a conclusion not warranted from the tariffs, and the tariffs are the best evidence of that.

Q. Please answer.—A. I found the application of a 6-cent rate, as I have previously described.

(Papers marked Defendants' Exhibits 158–A and 158–B.)

Mr. ROSENTHAL. I offer in evidence defendants' Exhibits 158–A and 158–B, being certain of the tariffs just described by the witness.

Mr. KELLOGG. Objected to as immaterial, and as to one of those exhibits I will ask Mr. Felton a question. In each one of these exhibits these tariffs which you have introduced appears?

Mr. ROSENTHAL. No; in some of them, not all.

Mr. KELLOGG. Give me the ones, then. What do those stamps mean "Received, H. E. Felton?"—A. That shows the date on which that particular copy of that tariff came to my office.

Q. I show you defendants' Exhibit 159. Please state what that is.—A. Defendants' Exhibit 159 purports to be a tariff issued by the C. B. & Q. road. The number is G. F. O. 276 cor., meaning corrected. It became effective January 1, 1904, and by the declaration on

9960 its face was to expire December 31 of the same year. It named rates from Chicago to East St. Louis for account of all shippers of the following kinds of freight, and at the rates which I will name: Vinegar, carload—do you want the weights?

Q. No.—Vinegar, carload——

Mr. KELLOGG. That is objected to as immaterial.

A. Vinegar, carloads, 6 cents per 100 pounds; beans, carloads, 6 cents per 100 pounds; wrought-iron pipe and fittings, carloads, 7 cents per 100 pounds; the "7" is indistinct, but it is 7; candles and paraffine wax, carloads, 10 cents; same, less than carloads, 15 cents; tin cans, carloads, $15 per car; linseed oil, carloads, 8 cents per 100 pounds; bridge material, carloads, 7 cents per 100 pounds.

Q. Are those the rates established on those commodities by the Burlington between Chicago and East St. Louis?—A. Yes, sir.

Q. In 1904?—A. Yes, sir.

Q. So that there were apparently a great many other commodities, like vinegar and beans and commodities of that kind, where the road made a 6-cent rate between those two points?—A. Yes, sir.

9961 Q. I show you tariff 24, being Government's Exhibit 558. Does that name rates from Wisconsin points to Illinois points?—A. It does; so purported on its face.

Q. Have you any application tariffs issued by the Illinois Central road applying Chicago rates from Whiting?—A. I have.

Q. Will you produce them, please, and have them marked?—A. I have one.

(Paper marked Defendants' Exhibit 160.)

Q. Is that the tariff just marked Defendants' Exhibit 160?—A. Yes, sir.

Q. When did it become effective?—A. October 28, 1901.

Q. Does it have any reference to Whiting?—A. It does.

Q. In what way?—A. It applies current Chicago rates from Whiting to a very large territory.

Q. Does that tariff specify any tariff making rates between Chicago and stations on the Illinois Central road, or is that covered only by general language?—A. It reads as follows: Stations between Whiting and—"Stations on the I. C. R. R. in Illinois (except Harvey and north thereof and Broadview and east thereof)." Later on it gives a list of tariffs, but a careful inspection of the description of the tariff indicates that they do not apply to points on the Illinois Central Railroad in Illinois from Chicago.

Q. Have you Supplement 4 to that tariff?—A. I have.

The same was marked Defendants' Exhibit 160–A.

Q. Does 160–A have any reference to oil rates from Whiting to East St. Louis?—A. It reads as follows: "Except where other
9962 authorized tariffs provide lower rates, the rates on petroleum and its oil products, carload, and empty barrels, carload, to and from Whiting, Indiana, will be the same as to and from Chicago, Illinois."

Q. So that the Illinois Central as early as 1902 applied specifically, by tariff filed with the Interstate Commerce Commission, the Chicago-East St. Louis rate from Whiting, did it not?

Mr. KELLOGG. That is objected to. The tariff is the best evidence of that.

Mr. ROSENTHAL. Well, I offer the tariff in evidence, defendants' Exhibit 160 and 160–A.

Mr. KELLOGG. It is objected to as immaterial.

Q. Have you subsequent supplements to that tariff?—A. I have. Not in my possession.

Q. I show you several additional supplements to that tariff running from 6 to 15. When did 6 become effective and when did 15 become effective?—A. Supplement 6 became effective October 15, 1903; supplement 15 became effective November 25, 1906.

Q. Do the various supplements that you have there, between 6 and 15, continue in effect the application of Chicago rates from Whiting?—A. The rule so applying petroleum rates appears on Supplement 6. It does not appear to have been cancelled by any of the succeeding supplements that I have, and it also appears on Supplement 15.

Mr. ROSENTHAL. I offer in evidence Supplement 6 and Supplement 15, and ask that they be marked defendants' Exhibit 160–B and 160–C.

9963 (The supplements were so marked.)

Q. During a period of, say, 25 years last past, do you know whether, generally speaking, a low basis of rates has prevailed between Chicago, Illinois, and East St. Louis, Illinois?—A. Such a low basis has prevailed; yes, sir.

Q. I do not mean simply with respect to the transportation of the given commodity, but with respect to the transportation of all commodities.—A. That is true.

Q. What is the distance between Chicago and East St. Louis?—A. The short-line distance, as I recall it, is 281 miles.

Q. Do you know the distance between Cleveland and Cincinnati, Ohio?—A. It is 244 miles.

Q. As illustrative of the low basis of rates existing between Chicago and East St. Louis, have you caused to be prepared a table instituting a comparison between the Chicago-East St. Louis rates on a large number of commodities and the Cleveland-Cincinnati rates on the same commodities?—A. I have.

Q. I show you defendants' Exhibit 161. Is that the table that you have just referred to?—A. It is.

Mr. ROSENTHAL. I offer defendants' Exhibit 161 in evidence.

Mr. KELLOGG. It is objected to as immaterial.

Q. Do you know from your railroad experience and knowledge of railroad affairs what it is that has brought about that low basis of rates between Chicago and East St. Louis?—A. I should say that the low basis of rates prevailing between Chicago and East St. Louis was caused by the friction of the tremendous tonnage in competition with each gateway, that has passed through those gateways in the last 30 years.

9964 Q. I show you defendants' Exhibit 162. Please explain what that is.—A. That is a further statement of other low rates between Chicago and East St. Louis.

Mr. KELLOGG. Wait a moment. In your Exhibit 161 you seem to have put a percentage of excess in rate per ton per mile Ohio over Illinois. In several places you have stated the per cent where there is no rate at all, from Cleveland to Cincinnati. What do you mean by that?

Mr. MILLER. You refer to grain?

Mr. KELLOGG. Yes; grain. There is no rate stated here.

Mr. MARTYN. There are three or four kinds of grain given first, and then below that the rate between Cincinnati and Cleveland it is all under one. So that the 70 there would be contrasted with the 3 above.

Q. While on that, Mr. Felton, I notice that the dates on defendants' Exhibit 161, showing when these various tariffs became effective, are in many instances differing dates. Did you, in instituting the comparison of rates between Chicago and East St. Louis and between Cincinnati and Cleveland, take the tariffs which were in effect at the same time, covering the same commodities?—A. My instructions were to compile the statement on that basis.

Q. And you understand that it was so compiled?—A. Yes, sir.

Q. That is to say, these various tariffs of early date, becoming effective of early date, continued in force and effect long enough to cover the same rates that were in effect between Chicago and East St. Louis?—A. That is true.

Q. Meaning by "the same rate" the rate named?—A. Yes, sir.

9965 Q. On the same product?—A. Yes, sir.

Mr. ROSENTHAL. I offer defendants' Exhibit 162 in evidence.

Mr. KELLOGG. As to defendants' Exhibit 162, you have got cattle $23 per car from Chicago to East St. Louis, have you not?

WITNESS. It so reads; yes, sir.

Mr. KELLOGG. And you figure that at 7⅔ cents per hundredweight, don't you, in your note?

WITNESS. That is the way it reads; yes, sir.

Mr. KELLOGG. That figures by using 30,000 pounds per car.

WITNESS. That is right.

Mr. KELLOGG. What does the average carload of cattle weigh?

WITNESS. I should say 30,000 pounds is a very reasonable figure.

Mr. KELLOGG. Mr. Felton, don't you know that not one per cent of the cars in the United States will hold 30,000 pounds of cattle?

WITNESS. I think the tariff from which this was made makes some reference to that.

Mr. KELLOGG. Isn't the average under 25,000 pounds?

WITNESS. Not in long cattle cars.

Mr. KELLOGG. I am talking about the average. Isn't it under 25,000?

Mr. ROSENTHAL. He is trying to demonstrate now that the Beef Trust does not get a low rate.

WITNESS. Mr. Kellogg, I could not go into that. It has been a long time since I have looked at the cattle tariff.

Mr. KELLOGG. The usual minimum is 20,000 to 23,000 pounds,

9966 isn't it—about 23,000 pounds?

WITNESS. It may have changed in recent years with the advent of the long car, the car of greater capacity. The effort of the operating department is to increase the carrying capacity of the car, and I think you will find many tariffs on cattle today based on a higher minimum than 23,000. There used to be 25-foot cattle cars, but when you come to get 36-foot cattle cars it is another proposition.

Q. At all events, that is the minimum rate named in that tariff?—A. I could not say without consulting the tariff again. It is the basis on which that computation was made.

(Paper marked Defendants' Exhibit 163.)

Q. I show you defendants' Exhibit 163. Please explain what that is.—A. Table of rates in cents per hundred weight from Chicago and points in the Chicago switching district to Milwaukee and all carload points of delivery at Milwaukee.

Q. That is for the purpose of illustrating the low rate prevailing between Chicago and Milwaukee on the articles therein named?—A. That is correct.

Mr. ROSENTHAL. I offer defendants' Exhibit 163 in evidence.

Mr. KELLOGG. It is objected to as immaterial. The distance is 80 miles, is it?

Mr. ROSENTHAL. No; 84 or 85 miles.

Mr. KELLOGG. That is, the Milwaukee distance.

WITNESS. I am not going to quote any more mileage unless I have the latest Official Guide.

Mr. KELLOGG. It is about 80 miles, isn't it?

WITNESS. If you will make a memorandum of that, Mr.
9967 Martyn, I will answer the question specifically after luncheon.

Q. In 1894 you were general freight agent of the C. & E. I., or assistant general freight agent?—A. I was general freight agent in 1894.

Q. In 1893 you were with the Evansville & Terre Haute, I think you said?—A. I was with the Evansville & Terre Haute from January 1 until November 1, 1893.

Q. And then you came back to the C. & E. I. as general freight agent?—A. That is true.

Q. Did the Chicago & Eastern Illinois, through you, as its general freight agent, issue a tariff on oil from Whiting to East St. Louis in 1894?—A. It did.

Mr. KELLOGG. I object to that. The tariff is the best evidence.

Q. I show you tariff of the Chicago & Eastern Illinois issued October 24, 1894, effective October 24, 1894. Does that make a rate on oil from Whiting to East St. Louis?

Mr. KELLOGG. That is objected to. The tariff is the best evidence.

Q. The number of that tariff is Chicago & Eastern Illinois 7441?—A. Chicago & Eastern Illinois G. F. D. No. 7441, and names a rate on oil from Whiting, Indiana, to East St. Louis of 6½ cents per 100 pounds.

Mr. KELLOGG. That is objected to as the witness' conclusion, and the witness should be confined to reading from the tariff.

(By consent of parties an adjournment was here taken until the morning of Thursday, October 8, 1908, at 10.30 o'clock.

9968 ROOM 677, FEDERAL BUILDING, CHICAGO, ILL.,
Thursday, October 8, 1908—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison; on behalf of the defendants, Mr. Moritz Rosenthal, Mr. John S. Miller, Mr. Chauncey W. Martyn.

HENRY E. FELTON, recalled, and his direct examination resumed, as follows:

By Mr. ROSENTHAL:

Q. What is the practice of the Standard Oil Company in connection with shipments from Whiting to East St. Louis, in so far as a division of the traffic was concerned, during the years from 1897, say, or 1898, when you became connected with the company, down to 1905 and '6?—A. It was the practice to divide the Whiting-East St. Louis traffic about equally between the C., B. & Q., the Chicago & Alton, and the C. & E. I. routes.

Q. Why?—A. The rate was the same over the three routes.

Q. I observe from the C. & E. I. tariffs that were put in evidence by the Government, and as testified to by Mr. Durand, that from 1895 on the C. & E. I. rate was 6¼ cents and the rate in 1894 was 6½.

Why was the ¼ cent added to that rate, as compared with
9969 the 6-cent rate on the Burlington and the Alton?—A. On shipments going into East St. Louis, for delivery to the Waters-Pierce Oil Company, there was a switching charge of $1 per car on shipments arriving at East St. Louis via the Chicago, Burlington & Quincy, and also on shipments arriving at East St. Louis via the Chicago & Alton. The Waters-Pierce Oil Company tanks were located on the Big Four Railroad, and the C., B. & Q. and Chicago & Alton did not absorb that switching. Therefore when the C. & E. I. came to make the rate, it added the ¼ cent per 100 pounds, to equalize the cost for making delivery on the tracks of the Big Four road at East St. Louis, as compared with shipments via the C., B. & Q. and shipments via the Alton.

Q. So that from 1895 on their rates were the same?—A. Yes, sir.

Q. On those three roads?—A. Yes, sir.

Mr. ROSENTHAL. Now, Mr. Kellogg, in the trial of the Chicago & Alton case, which you remember, before Judge Landis, Mr. Crossland explained the circumstances under which that cancel'ation mark was put upon the C. & E. I. tariff in 1903——

Mr. MILLER. 1906.

Mr. ROSENTHAL. No; the calcel'ation on the tariff shows as though it had been canceled as of 1903, whereas, as a matter of fact, it was not put on until 1906, by reason of certain correspondence passing between the Interstate Commerce Commission and the C. & E. I. road at that time. Now, we can shorten that testimony somewhat if we may read into this record Mr. Crossland's testimony in that regard, as though it were testimony given in this case. Mr. Crossland
9970 is there, and he will remember just what it was.

Mr. KELLOGG. I do not think that any copy of the tariff or any testimony that we put in shows any cancelation mark.

Mr. ROSENTHAL. Yes, it does. It appears on the face of the tariff.

Mr. KELLOGG. I have no doubt, Mr. Rosenthal, that I will consent to that. I would like to look at that. I have never looked at that testimony.

Mr. ROSENTHAL. Yes; I will point that out to you. I think we will agree. It only covers a page or two anyway.

Mr. KELLOGG. If you will point out where it can be found.

Mr. DURAND. I do not think there is any doubt about the fact.

Mr. ROSENTHAL. Oh, there is not the slightest doubt about the facts. It was developed in that case in the examination of Mr. Crossland.

Mr. KELLOGG. Just do that at noon, will you?

Mr. ROSENTHAL. Yes.

Q. Now, you issued that first 6½-cent rate over the C. & E. I. in 1894, as general freight agent of the C. & E. I. Why did you do that?

Mr. KELLOGG. That is objected to as immaterial and incompetent.

A. In order to get a share of the Whiting-East St. Louis traffic that was then going via the Chicago, Burlington & Quincy and the Chicago & Alton railroads.

Q. Had the Burlington and the Alton their 6-cent rates in effect before 1894?—A. They had.

9971 Q. From what time on?—A. I understand the Chicago, Burlington & Quincy Railroad first put in its 6-cent rate in 1891, and that the Chicago & Alton came along about 1892?

Q. And you were away from the C. & E. I. in 1893, and when you came back in 1894 you put in the C. & E. I. rate in order, as you say, to get your share of that business?—A. That is true; yes, sir.

Q. And from that time on did the C. & E. I. get a proportion of that business?—A. It did.

(Paper marked Defendants' Exhibit 164.)

Q. Was there any other road, Mr. Felton, that during the period from 1894 to 1905 made a 6-cent rate on oil from Chicago or Whiting to East St. Louis besides the three that you have already named.

Mr. KELLOGG. That is objected to. The tariff is the best evidence.

A. Yes, sir.

Q. What other road?—A. The St. Louis, Peoria & Northern Railway Company issued a tariff on oil from Chicago and McCook, Illinois, to East St. Louis.

Q. Where is McCook, Illinois?—A. McCook, Illinois, is the junction of the Atchison, Topeka & Santa Fe Railroad with the Chicago Terminal Transfer Railroad.

Q. Is the St. Louis, Peoria & Northern Railway Company a part of the Santa Fe system?—A. No, sir.

Q. But McCook is where the St. Louis, Peoria & Northern connects with the Terminal?—A. No, sir.

Q. Does the St. Louis, Peoria & Northern come in over the
9972 lines of the Santa Fe?—A. No, sir. The St. Louis, Peoria & Northern at that time had the right to make rates out of Chicago over its rails in connection with the Santa Fe road.

Q. And McCook is the crossing of the Santa Fe road with the Chicago Terminal Transfer?—A. I so understand.

Q. Now, have you that 6-cent tariff of the St. Louis, Peoria & Northern, making a 6-cent rate from Chicago or McCook to East St. Louis?—A. I have a copy of such a tariff in my hand.

Q. Has it been marked as an exhibit?—A. It is defendants' Exhibit 164.

Q. Does that make a rate of 6 cents from Whiting, Indiana, to East St. Louis on oil, and if so, point out by virtue of what language on the tariff.

Mr. KELLOGG. That is objected to. The tariff is the best evidence of what rate it makes.

A. It does. It states that the rate named in the tariff, of 6 cents per 100 pounds, includes Chicago Terminal Transfer switching, of $3 per car, and that would include the application of this rate from

any point on the Chicago Terminal Transfer Railroad. Whiting, being a station on the Chicago Terminal Transfer Railroad, would come within the scope of that notation, thereby applying the 6-cent rate from Whiting, Indiana, to East St. Louis, Illinois.

Mr. ROSENTHAL. I offer defendants' Exhibit 164 in evidence.

By Mr. KELLOGG:

Q. Was this tariff filed with the Interstate Commerce Commission?—A. I do not know, sir.

Q. There is no indication that it ever was?

9973 Mr. ROSENTHAL. There is no I. C. C. number on it.

WITNESS. There is no I. C. C. number on it.

Q. Well, you know that it was not, don't you? It is not necessary for us to examine the files of the Commission?—A. It has a notation on it that shows it is to be used on interstate traffic, which, as it reads "Higher rates must not be used on interstate traffic," etc., might possibly carry with it the idea that it was issued on a form used by the St. Louis, Peoria & Northern for filing tariffs with the Interstate Commerce Commission.

Q. Yes; but as a matter of fact it never was filed with the Commission, was it?—A. I could not answer that question, Mr. Kellogg; I don't know.

Q. You have never looked to see whether it was filed or not?—A. I have not, sir.

Q. Well, it is called a "billing order?"—A. The term "billing order" in those old days covered tariffs and everything else.

Q. And it runs for a period of how long? One year, doesn't it? That is, it expires with the current year?—A. Unless otherwise specifically provided, that is true.

Q. You never heard that it was filed with the Commission, did you?

Mr. ROSENTHAL. Wait a minute. I object to that. I shall have to insist on the witness refusing to answer that.

Mr. KELLOGG. Certainly whether this was filed with the Commission is very material to this document.

Mr. ROSENTHAL. I don't think it is of the slightest con-

9974 sequence.

Mr. KELLOGG. Well, do you admit it was not?

Mr. ROSENTHAL. No, sir; but I admit that as a legal proposition it is not of the slightest consequence.

Mr. KELLOGG. I have not asked your admission on that question.

Q. Now, it was issued on April 10, and I notice was received April 12, 1899, by "Howard Page, 1." What does that mean?—A. I do not know what the "1" means there.

Q. What does this statement mean?—A. Just "Received April 29, 1899, Howard Page."

Q. Who was he at that time?—A. Howard Page was at that time——

Mr. ROSENTHAL. Isn't that in evidence?

Q. Traffic manager of the Standard Oil, wasn't he?

WITNESS. What did you say, Mr. Rosenthal?

Mr. ROSENTHAL. I say that is already in evidence.

Mr. KELLOGG. I don't know whether it is or not.

Mr. ROSENTHAL. Oh, yes; it is. In 1899 he was connected, as traffic manager, with some of the Standard Oil companies; certainly.

Q. That means that it was received by him as such traffic manager?—A. At that time.

Q. Now, this says "Copy to R. A., R. M. F., I. F., E. P. H." What does that mean?—A. A copy, I should say, to some railroad officials.

Q. Now, who were they, do you know?—A. I do not, sir.

Mr. MILLER. You mean somebody connected with the railroad making the tariff?

9975 WITNESS. Yes, sir.

Mr. MILLER. Or the line over which the freight went.

WITNESS. Yes, sir.

Q. Who were the officials of the St. Louis, Peoria & Northern at that time?—A. I know that Mr. George B. Simpson was general freight agent, as shown by the name on the tariff, but I do not know the names of any of the other officials, having no occasion to know them.

Q. You never made any inquiry as to whether this was filed with the Commission or not?—A. I did not, sir.

Q. Did you make any shipments under it?—A. I do not know, Mr. Kellogg; it is so far back.

Q. It says "Rate includes Terminal Transfer Railroad switching, $3 per car." That is, you understand that was to be deducted from the 6 cents a hundred?—A. Yes, sir.

Q. In other words, the 6 cents a hundred was to cover that?—A. Yes, sir.

Q. Now, also "and Big Four switching from I. & N. yard to Waters-Pierce Oil Company's plant." Where was that?—A. I understood that there was a short division (and I say this from memory) on the lower end of the St. Louis, Peoria & Northern known as the Illinois & Northern; and that evidently covered the movement from the Illinois & Northern yard, being part of the St. Louis, Peoria & Northern little system, to the Waters-Pierce plant on the tracks of the Big Four road, as I have previously mentioned in my testimony.

Q. What were those switching charges?—A. I do not know, sir; but I understood they were a dollar a car, the same as via the

9976 other lines.

Q. Now, this says also "Prepaid" on the face of this tariff. Did you ever see that on a tariff before?—A. I do not recall whether I have or not, Mr. Kellogg.

Q. Then, that makes a rate, if the freight is prepaid?—A. I should say that that did not govern the rate in any respect.

Q. Why?—A. It was simply a notation to those interested that the shipments would be billed prepaid.

Q. Well, that was very unusual, wasn't it, to have a tariff marked "Prepaid?"—A. I have already answered that question by saying that I do not remember whether or not I ever saw that word on a tariff.

Q. You have no recollection of seeing it?—A. That would be an unusual thing to put on a tariff to-day, but it was not in 1899.

Q. Do you remember ever seeing it on a tariff in 1899?—A. I should not be at all surprised if during my experience on the C. & E. I. road I issued tariffs similar to that, with the word "Prepaid."

Q. Do you recollect ever having seen one?

Mr. ROSENTHAL. Now, aren't we getting into a general cross-examination here?

Mr. KELLOGG. No.

Mr. ROSENTHAL. I think we are. I shall have to object to that.

A. I have stated previously in my examination here that in those days tariffs (and also that would include instructions
9977 to auditors and to billing and receiving agents) were gotten out in the manner that best appealed to the economy and despatch of the rate clerk, and I think that Mr. Durand will confirm what I say, if he made a close investigation of Illinois rate issues, that they were issued in that manner on all classes of traffic.

Q. "Prepaid" means that the charge did not follow the freight?—A. "Prepaid" does not mean blind billing, if you have that in your mind.

Q. I am not talking about that.—A. "Prepaid" simply means that the shipper paid the freight charges, instead of the consignee.

Q. That is it. The charges did not follow the freight?—A. That is right; yes, sir.

(Paper marked Defendants' Exhibit 165.)

By Mr. ROSENTHAL:

Q. I show you, Mr. Felton, Defendants' Exhibit 165. What is that?—A. That is a tariff issued by the Illinois Central Railroad Company, effective May 12, 1898, naming a rate of 6 cents per 100 pounds on oil in carloads from Kankakee to East St. Louis.

Q. How far is Kankakee from Chicago?—A. Fifty-two or 55 miles, something like that.

Q. Did the Standard Oil Company have a plant at Kankakee at that time?—A. No, sir.

Q. So that that rate was not issued for the benefit of the Standard Oil Company?—A. That is correct.

Q. And that makes a 6-cent rate from Kankakee to East St. Louis?—A. Yes, sir.

9978 Mr. ROSENTHAL. I offer defendants' Exhibit 165 in evidence.

By Mr. KELLOGG:

Q. I wish to ask a question about this. You say when this rate order of 1898 was made the Standard Oil Company had no plant at Kankakee?

Mr. ROSENTHAL. Wait a minute. I shall have to object to that—

Mr. KELLOGG. Now, one moment——

Mr. ROSENTHAL. That gets right into a general cross-examination. Now, if you have any questions to ask concerning——

Mr. KELLOGG. I am going to ask that.

Mr. ROSENTHAL. Concerning that which appears upon the face of the tariff itself, for the purpose of predicating an objection to the offer, I have no objection to your going into that at this time; but I object to your taking my time now on a general cross-examination.

Mr. KELLOGG. That leads up to this tariff.

Mr. ROSENTHAL. It does not lead up to anything that makes a basis for an objection to the tariff. I shall have to instruct Mr. Felton not to answer that, upon the ground that it is general cross-examination.

Q. Do you refuse to answer that?—A. I shall have to abide by the advice of my counsel.

Q. Isn't it a fact that the Standard Oil Company immediately thereafter bought the plant at Kankakee?

Mr. ROSENTHAL. I shall have to instruct you not to answer that, Mr. Felton, until the time comes to cross-examine you generally; and Mr. Kellogg knows he is only wasting my time by

9979 asking these questions at this time.

A. Mr. Kellogg, I will have to ask you to kindly relieve me from that answer until my cross-examination——

Q. You refuse to answer. That is all I want to know.

Mr. ROSENTHAL. I instruct him to refuse to answer that question or any other question of a general nature until it comes your turn to cross-examine.

A. I will be glad to answer that on cross-examination.

Q. Is it not a fact that the Cudahys built that plant and that the Standard Oil Company bought it immediately thereafter and dismantled it?

Mr. ROSENTHAL. Now, I submit you are wasting time here by asking questions that I shall instruct him not to answer. That already appears in the record in this case. You are not asking anything smart or cunning at all——

Mr. KELLOGG. Then, you admit that is the fact, do you?

Mr. ROSENTHAL. You are not asking anything cunning at all, because it has already been testified to, and your smile does not add anything to the situation at all.

Mr. KELLOGG. Then, why did you ask him if they did not have a plant there, when you knew it already appeared in the record that they did?

Mr. ROSENTHAL. I asked him if the Standard Oil Company had a plant there in 1896 or in 1898, and you know that they did not have.

Mr. KELLOGG. They immediately bought it, though, afterwards.

9980 Mr. ROSENTHAL. No; you are very much mistaken, and your smile does not make it so. Now, we cannot both talk at the

same time, and there is not much use of your asking questions which I am going to instruct the witness to refuse to answer at this time, because you have not any right to cross-examine him; so that we will both save time if you will let me go ahead.

Q. Was this billing order filled with the Interstate Commerce Commission?

Mr. ROSENTHAL. I shall have to object to that.

Q. Do you decline to answer that?—A. I don't know—well, I will withdraw that. I did not catch Mr. Rosenthal's instructions. I decline to answer at present.

Mr. ROSENTHAL. He will answer all those questions on cross-examination when it comes your turn.

Mr. KELLOGG. I am quite aware you do not want the facts to come out.

By Mr. ROSENTHAL:

Q. In your explanation the other day concerning the reason for the low basis of rates over the Chicago & Eastern Illinois from Chicago, did you entirely cover that proposition, or were there some reasons other than those given by you then, that you wish to state now?—A. I think I have something——

Q. What was the general trend of the traffic on the Eastern Illinois at that time?—A. As between the north-bound and the south-bound traffic, the north-bound traffic was much the heavier of the two.

Q. That is, there was more traffic coming north over the
9981 Eastern Illinois than there was going south?—A. That is correct.

Q. And what result did that bring about—what freight situation did that bring about—in connection with the making of rates?—A. That brought about an excess empty freight mileage south-bound, compared with north-bound. What I mean by that is: We would bring up, for example, off the Shelbyville division, which was one of our St. Louis routes, solid trains of grain, lumber, railroad ties, live stock, and things of that kind, and then we would have to haul a great many of those cars south-bound empty. We had no lading for them. The result was that I was always looking for south-bound traffic to help pay those train expenses.

Q. Mr. Felton, what is the cost of moving a train from Whiting to East St. Louis? Can you give us some estimate of that?—A. As I recall the figures on the C. & E. I. road about that time, our train expenses were something like $1 to $1.10 a train mile.

Q. So that for a distance of 185 miles that would make a cost of about $200?—A. Yes, sir. That was the distance from Dolton to Shelbyville, the C. & E. I. connection with the Big Four on traffic for East St. Louis.

Q. So that 12 or 13 carloads of oil, at $15 a car, would pay the expense of such a haul?—A. I used to figure in those days that if I could get any traffic of a competitive nature that would go towards paying those expenses, I was lucky in getting hold of it; and on a

small road in those old days back at that time the general freight agent was alive to all those situations. Therefore, if I could
9982 put in a train going down on the Shelbyville branch 10 or 15 carloads of oil that paid us about $15 a car, I went a long way toward solving the operating problem of getting that lot of empties south.

Mr. KELLOGG. Do I understand that the oil cars were loaded both ways?

WITNESS. No, sir; the oil cars came back empty.

(Paper marked Defendants' Exhibit 166.)

Q. I show you defendants' Exhibit 166. What is that, please?—A. Defendants' Exhibit 166 is a table showing the C. & E. I. and E. & T. H. roads division of through oil rates from Toledo, Ohio, to stations on the C. & E. I. and E. & T. H. that are junction with direct east and west roads.

Q. Will you explain that a little further?—A. Shall I explain it in full?

Q. Yes, sir.—A. Take Terra Haute, Indiana, as an example. The rate on petroleum oil (tariff authority given on the exhibit) from Toledo, Ohio, to Terra Haute, Indiana, via the Lake Shore & Michigan Southern Railway to Chicago and the Chicago & Eastern Illinois Railroad was 10 cents per 100 pounds. The Chicago & Eastern Illinois percentage and its division of that through rate was 4.2 cents per 100 pounds.

Q. That is to say, on oil shipped from Toledo, where there are so-called independent refineries, to Terre Haute, over the route indicated by you, the rate between those two points being 10 cents, the proportion of that 10-cent rate that the Chicago & Eastern Illinois would have obtained would have been 4.2 cents?—A. That is true, if it had been able to get any of the business. That was always
9983 a question with the competitive traffic.

Q. But there being competitive traffic between Toledo and Terre Haute, it first had to get the business, and, secondly, had it gotten the business, all it could have gotten out of the business would have been 4.2 cents per hundred?—A. That is correct, for its maximum haul, Chicago to Terre Haute.

Q. In the event that the Chicago & Eastern Illinois had gotten Toledo business in that way, from which it would have gotten 4.2 cents a hundred, what would the haul have been over the Chicago & Eastern Illinois?—A. If it came from the Lake Shore (that is the basis of this computation), we would have received the traffic in Chicago, and the haul from Chicago to Terre Haute is 178 miles.

Q. Now, after the establishment of the Whiting refinery, what was the rate on oil from Whiting to Terre Haute over the C. & E. I.?—A. We made a rate of 5½ cents per 100 pounds.

Q. And did you get the business on that rate?—A. We did.

Q. Have you any recollection of getting business from Toledo prior to that time that paid you the 4.2 cents?—A. My recollection

would be that we found the business from Toledo was going into Terre Haute via competing lines.

Q. And you were not getting any of it, or your proportion of it, at least?—A. We were getting little or none of it.

Q. So that by making a rate of 5½ cents from Whiting to Terre Haute the Chicago & Eastern Illinois accomplished two things, did it not: First, it got 1.3 cents more per cwt. than it would have
9984 gotten on oil that had been shipped from Toledo, and, secondly, it got business by reason of that rate of 5½ cents, where theretofore competing lines got the business?—A. That was the object of making the 5½-cent rate.

Q. Now, take the rate from Toledo to Evansville, Indiana. That rate was 13 cents, was it not?—A. That is true.

Q. And what was the longest possible haul that the Chicago & Eastern Illinois could get out of any combination route from Toledo to Evansville?—A. Via one of the Chicago routes, and I pick out the Lake Shore & Michigan Southern as an example.

Q. So taking the longest possible haul that the Eastern Illinois could get on oil shipped from Toledo to Evansville, what would its proportion of the 13-cent rate have been in the event that it had gotten any of that traffic?—A. Do you ask for the C. & E. I alone, or the C. & E. I. and the E. & T. H. jointly?

Q. I include the E. & T. H. as a part of the C. & E. I. system.—A. They would have earned jointly 7.46 cents per 100 pounds.

Q. There was no combination of routes, or no haul in connection with oil shipped from Toledo to Evansville by which the C. & E. I. could possibly have gotten more than 7.46 cents out of that 13-cent rate, was there?—A. No, sir.

Q. In other words, in making up this table, under the column of "C. & E. I. and E. & T. H. division of Toledo rates," you have there stated the largest possible prorating division of that 13-cent rate that the Eastern Illinois could get by any combination of routes?—A. Yes, sir; I took its maximum haul, and consequently its maximum earnings under the percentage division.

Q. Now, the Whiting rate of 8¼ cents, therefore, from
9985 Whiting to Evansville, as shown on defendants' exhibit 166, gave the Chicago & Eastern Illinois substantially four-fifths of a cent more per hundred than it could possibly have gotten on the longest haul it could have made, in the event that the oil had been shipped from Toledo to Evansville, did it not?—A. The rate from Whiting to Evansville was substantially four-fifths of a cent per 100 pounds higher than the C. & E. I. and E. & T. H. proportion, Chicago to Evansville.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 166.

By Mr. KELLOGG:

Q. Now, Mr. Felton, you take this Terre Haute rate. You say the C. & E. I. and the Evansville & Terre Haute got 5½ cents a hundred?—A. I say the C. & E. I. did.

Q. The C. & E. I. got 5½ cents a hundred for hauling the oil from Whiting to Terre Haute?—A. That is true.

Q. Did you pay any switching charges out of that?—A. Yes, sir.

Q. How much?—A. $3 a car.

Q. That amounts to ¾ of a cent, doesn't it?—A. Yes, sir.

Q. So you did not get 5½ cents? You got 5½ cents, less ¾ of a cent; is that correct?—A. That is correct.

Q. Then, in that respect this table is not correct?—A. Yes, sir. It says "Excess per 100 pounds in Whiting rate." It does not say "Excess per 100 pounds in C. & E. I. proportion."

Q. You are talking about the C. & E. I. earnings, aren't you?—A. I show the C. & E. I., and——

Q. Now, that excess——

Mr. ROSENTHAL. Wait a minute. You show what?

WITNESS. I show the C. & E. I. and E. & T. H.

9986 Mr. KELLOGG. This is not a correct statement.

Mr. ROSENTHAL. Why, yes, it is. It is a correct statement of just what it purports to be.

Q. Now, you purported to show here in this statement that the C. & E. I. road got 1.3 cents more by taking the oil from Whiting than it would get on the division of the Terre Haute rate, didn't you?—A. I do not say that, at all.

Q. Is that what you purport to show?—A. No; because——

Q. Is not that what you testified to?—A. No, sir. I said the rate from Whiting. The C. & E. I. had no rails north of Dolton. The C. & E. I. had to pay a charge to get from Chicago to Dolton, and they had to absorb a charge from Whiting to Dolton. The C. & E. I. had to pay wheelage on every car that moved north of Dolton. It had no tracks north of Dolton.

Q. What was your object in making up this statement?—A. Simply to show why I made those rates from Whiting to Terre Haute.

Q. Well, why did you make them?—A. To get the busines

Q. And to get more earnings out of it than you got the other wasn't that it?—A. To get substantially the same.

Q. Substantially the same earnings?—A. Yes, sir.

Q. Then out of this Whiting rate must be deducted three-fourths of a cent a hundred?—A. Must be deducted $3 a car.

Q. Did you pay any switching on the stuff that came from the East?

Mr. ROSENTHAL. Now, just a minute.

Mr. KELLOGG. I want to see if these figures are correct.

Mr. ROSENTHAL. Wait a minute. That is not what you want

9987 to see.

Mr. KELLOGG. Yes; that is exactly what I want to see.

Mr. ROSENTHAL. You say you did that in order to get the business and thereby increase the earnings. How much of the business had you been getting from Toledo to Terre Haute prior to the establishment of the Whiting refinery? Isn't it true that you had been getting practically none?

WITNESS. That is what I previously said; yes, sir.

Mr. ROSENTHAL. So that the rate, as you have stated here, showing the pro rata share of the Chicago & Eastern Illinois of the Toledo rate to the various points therein named is upon the theory that you would have gotten that providing you had gotten the business?

WITNESS. Yes; the complaint, as I understand it, of the Government in this case——

Mr. KELLOGG. Never mind that——

WITNESS——is not what the C. & E. I. earned, but in making a low rate from Whiting to Terre Haute. Now, I put in here the rate from Whiting to Terre Haute. I have not tried to mislead you, because that says Whiting. It does not say Chicago; it does not say Dolton; it says Whiting, Mr. Kellogg.

Mr. KELLOGG. Now, did you pay any switching charges on oil coming from Toledo?

Mr. ROSENTHAL. I object to that. I shall have to ask you not to answer that question.

Mr. KELLOGG. It bears on the correctness of this exhibit.

Mr. ROSENTHAL. Not at all. The exhibit is absolutely correct and shows for itself.

9988 Mr. KELLOGG. It is not correct in any particular, I guess, as nearly as I can find out. That is what I am trying to find out. Now, did you pay any switching from Toledo on any of this?

Mr. ROSENTHAL. I shall have to instruct you not to answer that question. It hasn't anything to do with the correctness of this exhibit.

Q. Let us see if these rates are correct. Of what date did you put these rates from Toledo in this exhibit?—A. The tariff authority is shown on the sheet.

Q. Yes; but how long did that remain in effect? That is the question.—A. I could not say without going through the tariff.

Q. Don't you know that those rates were raised from Toledo about 1900, and that the rate from Toledo to Terre Haute was 12 cents instead of 10?—A. There was some advance in the rates, but the 5-cent rate was put in when the rate was 10 cents.

Q. That is true; but the rates in 1900 and from that time on——A. I could not say without consulting the tariff.

Q. ——were higher than the rates named in this sheet, were they not?

Mr. ROSENTHAL. Wait a minute. I shall have to object to that. That hasn't anything to do with the theory of this exhibit, and it would not even be competent general cross-examination.

Mr. KELLOGG. Oh, yes, it would.

Mr. ROSENTHAL. The theory of this exhibit is a comparison of the Whiting and the Toledo rates, for the purpose of justifying the rates that were put in from Whiting at the time that they were put in, as shown on this exhibit.

9989 Mr. KELLOGG. Well, now——

Mr. ROSENTHAL. Very well. Now, I shall object to any general cross-examination that goes beyond what appears upon the face of this exhibit.

Q. What is the date you claim those rates were effective? Name them.

Mr. ROSENTHAL. I object to that. The exhibit shows on its face what it is.

Mr. KELLOGG. No, it doesn't. It doesn't show any date at all.

Mr. ROSENTHAL. I insist that it does. It shows the tariff authority upon the bottom of the sheet. Now, Mr. Kellogg, you are violating the rule that has been laid down here. You are taking my time, and I say I shall have to keep on instructing the witness not to answer until you get to a general cross-examination, when he will freely answer all of these questions, or withdraw the witness altogether and stop this hearing.

Mr. KELLOGG. Well, sir, you can do just as you please. I am going to ask him whether those rates were in force in 1900 or whether they were not.

Mr. ROSENTHAL. And I am going to instruct him not to answer——

Mr. KELLOGG. What do you say——

Mr. ROSENTHAL. And I am going to keep right on talking here now as long as you keep on talking, because I am going ahead with this examination, and you will be taking a lot of my time——

Mr. KELLOGG. Now, did——

Mr. ROSENTHAL. Because you can't consume my time in 9990 that way.

Mr. KELLOGG. Now, did the rate from Toledo——

Mr. ROSENTHAL. Now, Mr. Felton, I wish to ask you another question.

Mr. KELLOGG. I want to know from this examiner if there is not some limit to the insolence of counsel.

Mr. ROSENTHAL. I don't think that Mr. Kellogg, when he knows what the rule is that has been announced by the examiner, and when he knows that he can ask all of these questions when he comes to the general cross-examination, and take all the time that he wants to take, should wilfully attempt to violate that rule. Now, I have been exceedingly liberal so far——

Mr. KELLOGG. I am not violating it.

Mr. ROSENTHAL. And I want to continue to be liberal, but I am not going to have that privilege abused.

Mr. KELLOGG. I am not only not wilfully violating any rule, but you are violating your agreement in refusing to allow us to cross-examine this witness.

Mr. ROSENTHAL. Now, we fought that all out here on Friday last, and I won out on it, so what is the use of getting back on that question again?

Mr. KELLOGG. You have not won out on anything yet.

Mr. ROSENTHAL. We won out on everything we have had to fight about.

Mr. KELLOGG. I ask the examiner to protect me in the examination of this witness.

9991 The EXAMINER. Gentlemen, I shall certainly have to insist that you talk one at a time.

Mr. ROSENTHAL. I have the witness——

The EXAMINER. One moment, please. You have a right, of course, to conduct this examination as you see fit. I do not know that I have any power here except to preserve an orderly way of conducting it. I suppose you can go on talking whenever you please, one after the other, until you reach a point where something else has to happen; but I think ordinary courtesy requires that you should not all talk at once.

Mr. ROSENTHAL. I quite agree with that.

Mr. KELLOGG. I object to this exhibit, because it shows, from an examination of Mr. Felton, that it is not correct on its face.

9992 Q. Your tariff authorities cited under notes A and B on defendants' Exhibit 166 are Lake Shore tariffs, as thereon indicated, effective September 1, 1896, and effective March 12, 1898, and February 1, 1900?—A. The two latter dates are percentage sheets.

Q. Oh, I see. Were you able to find any earlier Lake Shore tariffs than those showing what the rate was in 1892?—A. The Lake Shore tariff that I have quoted here was the earliest tariff that I could get hold of, although I know there were oil rates in force from Toledo prior to that date.

Q. As indicated on this table?—A. As I understand, the same is indicated on this table, but I could not find an earlier tariff; 1896 is a long ways to go back for a tariff.

Q. And the C. & E. I. tariff, under which you made these Whiting rates, was the C. & E. I. tariff G. F. D. 5242, effective March 24, 1892?—A. That is correct.

Q. And then the next one effective April 1, 1901?—A. That continued the rates.

Q. That continued the rates of the 1892 tariff?—A. Yes, sir. So that I was making a comparison of both bases of rates prior to 1900.

Q. Yes.

Mr. KELLOGG. This division sheet, under the note B, was the division sheet of February 1, 1900, applicable to those early tariffs?

WITNESS. I was informed that it was a reissue of earlier divisions.

9993 The one I quote here was a printed sheet, the Lake Shore having gotten together scattering individual division sheets and put them in one issue. That is, I was so informed, Mr. Kellogg. I had not access to their records.

Mr. KELLOGG. Will you please inform yourself, so you will be able to answer when I come to ask you, when those were raised.

Q. With respect to the use of unfiled State tariffs on shipments passing from one State to another, I think you have already testified that up to a certain time there was a general practice in existence on the railroads of the country, under which general practice those unfiled State tariffs were used on through shipments.

Mr. KELLOGG. That is objected to as incompetent and immaterial.

A. I have so testified, and I have presented some tariffs in evidence in proof of what I said.

Q. Have there been any rulings of the Interstate Commerce Commission, from which rulings you can show the existence of such a general practice?

Mr. MILLER. While Mr. Rosenthal is looking at that, in connection with the last exhibit, 166, there is a map that shows the crossing of the Chicago & Eastern Illinois and the other lines that are indicated on that exhibit. I would like to have that identified and offered as defendants' Exhibit 167 in connection with defendants' Exhibit 166.

(A map was so marked Defendants' Exhibit 167.)

WITNESS. I have such a map, marked Defendants' Exhibit 167.

Mr. MILLER. We offer defendants' Exhibit 167 in evidence.

(Papers marked Defendants' Exhibit 168–A to 168–E, inclusive.)

9994 Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 168–A to 168–E, with the understanding, Mr. Kellogg, that certain portions of that exhibit which have no bearing upon the purpose of the offer will be eliminated by us some time within the next day or two, by crossing out those portions that we do not want in. I would just as soon they would all go in, if you want them, but I do not want to burden the record unnecessarily with everything that is there printed. Take the first one, for example; it copies part of the statute. There can be no necessity of copying that into the record, and I think by editing that exhibit a little before it is finally printed we can eliminate a good portion of it.

Mr. KELLOGG. All right.

Q. Mr. Felton, what was the rate from Whiting to Grand Junction as early as 1896, and have you the tariff showing the rate? Whenever I speak of a rate, unless I otherwise indicate, I mean a rate on oil.—A. Yes, sir. I have a tariff of the Illinois Central Railroad, effective February 11, 1896. It is a tariff on oil, tank cars, from Whiting, Indiana, to Grand Junction, Tennessee, of 13 cents per 100 pounds.

Mr. MILLER. Give the number of the tariff.

WITNESS. I. C. R. R., G. F. D., 4800–A; Interstate Commerce Commission No. A–16.

Q. Indicating that that rate had been filed with the Interstate Commerce Commission?—A. Yes, sir. There is a note on this tariff which I have not read, but will read now so as to complete it (the others are very much like it): "Note: The above rate will

9995 apply as a proportional rate only on shipments destined to points on the Memphis & Charleston Railroad and will not apply on shipments to Grand Junction, Tennessee, proper."

Mr. KELLOGG. Mr. Durand described every one of those accurately, clear through.

Mr. ROSENTHAL. He described some of these, not all of them.

Mr. MARTYN. Except that he left off the clause in regard to waybilling.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 169, showing the 13-cent rate which the witness has just described.

Q. When was the next tariff issued by the Illinois Central making a 13-cent rate from Whiting to Grand Junction on shipments destined beyond?—A. The next tariff I have is effective May 23, 1896, Illinois Central G. F. D., 4800–B, cancelling 4800–A; the I. C. C. number of 4800–B is A–242.

Q. It is effective May 23, 1896?—A. It is.

Q. And names a 13-cent rate on petroleum and its products (including benzine, benzole, carbon, gasoline, lubricating, and naphtha) between the same points, does it not?—A. From Whiting to Grand Junction when destined beyond.

Q. Are there any waybilling instructions there?—A. There are, in the same sized type as the balance of the information on the tariff.

Q. What are the billing instructions?—A. Under the heading "Billing instructions" appears the following (I am now reading from the tariff): "Allow the C. & C. T. Ry. $3 per car (regardless of weight) from Whiting, Indiana, to Riverdale, and waybill
9996 from Riverdale to destination at remainder of rate." I have no exhibit number for this.

Mr. ROSENTHAL. I think that will cover it without putting in the tariff, unless the Government wants it.

Q. How long did that rate continue under that tariff?—A. Until July 1, 1896.

Q. And then what?—A. The next document I have on this subject is G. F. D. 4800–C, I. C. C. No. A–342, effective July 28, 1896, which continues the same rate and waybilling instructions.

Q. Until what date?

Mr. MILLER. Does that on its face cancel 4800–B?

WITNESS. No; 4800–B was cancelled by the cancellation which I read. 4800–C seems to have added somewhat to the list of products covered by the tariff.

Mr. MILLER. Do those tariffs contain the recital that they are to apply to traffic to points on the Memphis & Charleston?

WITNESS. Yes, sir; they either say that or that the above rate will not apply to Grand Junction proper. 4800–C, I. C. C. No. 342, was canceled, effective January 31, 1898, by a document issued for that purpose, bearing I. C. C. No. A–1296. The next tariff I have is 4800–D, I. C. C. A–1321, effective February 8, 1898. It continues the rate of 13 cents on oil from Whiting to Grand Junction when destined to points on the Memphis & Charleston, and continues also the waybilling instructions which I have previously read. This tariff provides on its face that it shall expire February 25, 1898.

Q. Now, that made a 13-cent rate on oil from Whiting to Grand Junction, over the Illinois Central, from Riverdale to
9997 Grand Junction and over the Terminal Transfer or Belt Line from Whiting to Riverdale, did it not?

Mr. KELLOGG. That is objected to, as the tariff is the best evidence.

A. It did.

Q. Where is Riverdale?—A. Riverdale is some 17 miles south of Chicago, and a junction point of the Illinois Central with the Chicago Terminal Transfer Railroad.

Q. So, under those tariffs, the Illinois Central had the whole haul except the Belt Line haul?—A. That is true.

Q. When did the Eastern Illinois issue a rate to Grand Junction? The record in this case, on page 1569, while Mr. Durand was on the stand, shows that that Eastern Illinois tariff was G. F. D. 1084, I. C. C. 333, and was effective from September 15, 1897. So, in the record of this case, as per Mr. Durand's testimony, it appears that the Eastern Illinois put in a 13-cent rate, effective September 15, 1897, from Dolton to Grand Junction. What was the route there?—A. Chicago Terminal Transfer Railroad to Dolton; Chicago & Eastern Illinois Railroad to Terre Haute; Evansville & Terre Haute Railroad to Evansville; Illinois Central Railroad, Evansville to Grand Junction, the Illinois Central of course using the Henderson Bridge to cross the Ohio River.

Mr. MILLER. That tariff was made by the Eastern Illinois in connection with these other roads you have named, Evansville & Terre Haute and the Illinois Central?

WITNESS. I so understand, but I would like to see the tariff before I answer specifically a question like that.

9998 Q. Now, that tariff continued in force how long?—A. This tariff became effective February 8, 1898.

Q. You are now speaking about a subsequent tariff, are you not? The next tariff, after the first one just described, issued by the Eastern Illinois, was the tariff that you have before you. When did that become effective?—A. This tariff, which, if you please, I would like to explain, makes no reference to a prior tariff.

Q. Yes; I understand.—A. And therefore I am unable to connect it up with any prior tariff. It became effective February 8, 1898. Its number is Chicago & Eastern Illinois Railroad G. F. D. 10445, I. C. C. 394.

Q. The tariffs that you have referred to of the Eastern Illinois, as making a rate from Whiting to Grand Junction, do it in what way?—A. I have only one of the tariffs before me—namely, I. C. C. 394. That tariff makes a rate from Dolton, Illinois, to Grand Junction, Tennessee, of 13 cents per 100 pounds, and then provides, on the same page of the tariff, the following: "Above rate will also apply from Whiting, Indiana, via C. T. T. Ry."

Q. So at the time the Chicago & Eastern Illinois first put in its rate of 13 cents, making the rate in the way that you have described from Whiting to Grand Junction, how many documents had theretofore been filed with the Interstate Commerce Commission making that same 13-cent rate or referring to it?—A. Adding the first C. & E. I. tariff, which I have not seen this morning, I have testified

9999 here to eight documents bearing on this 13-cent rate, Whiting to Grand Junction, Tennessee, which show on their face to have been filed with the Interstate Commerce Commission.

Q. Referring to Government Exhibit 533, being one of the 13-cent tariffs of the Chicago & Eastern Illinois, I call your attention to the words at the bottom of that exhibit, "Waybill per division sheet." What does that mean?—A. "Waybill per division sheet" means that the agent at Dolton would make a waybill at the dividing up of the 13-cent rate in accordance with the instructions shown on the division sheet. Unless I had that division sheet I could not say whether he would make a waybill from Dolton to Grand Junction, first deducting the $3 switching of the Chicago Terminal Road, or whether he would waybill to Terre Haute or Evansville at the C. & E. I. straight Terre Haute or at the C. & E.-I. & T. H. combined proportion, allowing the Illinois Central their proportion from Evansville to Grand Junction.

Q. But he would show a rate and would not blind-bill?—A. Oh, there is nothing in this tariff that says anything about blind-billing.

Mr. KELLOGG. Now, wait a moment. That is objected to.

WITNESS. That is true; yes, sir.

Mr. KELLOGG. The division would control as to how it would be billed, then, according to your statement, wouldn't it?

WITNESS. The instructions on the division sheet would be controlling; yes, sir.

Mr. KELLOGG. That is, according to your idea?

10000 Q. Blind-billing means not showing the rate on the waybill, does it not?—A. Yes, sir.

Q. And the waybill does not get to the shipper, does it?—A. No, sir.

Q. That is purely a railroad document?—A. Yes, sir.

Q. It does not reach the possession of the shipper at any time in connection with the shipment?—A. That is true.

Q. In connection with any of these shipments that were made to Grand Junction, did the Standard Oil Company, to your knowledge, or anyone connected with it, have anything to do with causing any of the waybills to be blind-billed?

Mr. KELLOGG. One moment. If he knows, he can answer; but that question is objectionable, because it does not ask him if he knows. He was not connected with the Standard Oil Company at that time.

Mr. ROSENTHAL. Oh, yes; he was.

Mr. MILLER. He was connected with the railroad.

Mr. KELLOGG. No; he was not connected with this railroad either.

The question was read by the reporter.

Mr. KELLOGG. That is objected to as leading. He can state what he knows about that subject. A direct answer to that question is not proper.

A. Not to my knowledge.

Q. Mr. Felton, do you know what purpose the Standard Oil Company had in consigning its oil to Grand Junction during the years you were connected with the Standard?—A. I do.

Q. Please state it.—A. Oil was consigned to Grand Junc-
10001 tion for the purpose of distribution from that point.

Q. Distribution where?—A. Into the South.

Q. Where is Dolton?—A. Dolton, Illinois, is a point a short distance south of Chicago. It is, among other things, the junction of the Chicago & Eastern Illinois Railroad and the Calumet Terminal Transfer Railroad.

Q. Was it the end of the Eastern Illinois rails, and is it now, in so far as the northern terminus is concerned?—A. Dolton was the northern terminus of the Eastern Illinois railroad proper. The Eastern Illinois may have owned some side tracks, like a delivery track at Twelfth street, but the Eastern Illinois did not in itself own the transportation rails north of Dolton.

Q. The Eastern Illinois got into Chicago from Dolton over the Western Indiana, did it not?—A. That is true.

Mr. ROSENTHAL. I would like to have the record show that defendants' Exhibit 169 is withdrawn, because it is already in the record as Government Exhibit 534.

(Another paper was marked "Defendants' Exhibit 169–A.")

Q. I show you defendants' Exhibit 169–A. Please state what that is.—A. Defendants' Exhibit 169–A is Illinois Central Railroad tariff G. F. D. 4800-B, I. C. C. No. A–242, naming a rate of 13 cents on petroleum from Whiting, Indiana, to Grand Junction, Tennessee.

Mr. ROSENTHAL. I offer defendants' Exhibit 169–A in evidence.

Q. Have you caused to be prepared a statement of carload
10002 shipments from various Standard refinery points to the territory south of Kentucky and Virginia and east of the Mississippi River, not including, however, Mississippi River points or the cities of Mobile and Pensacola, for the year 1905?—A. I have.

Q. I show you defendants' Exhibit 170. Does that contain the data just referred to in my last question?—A. It does.

Q. I observe there that the total number of cars from refineries other than Whiting shipped into that territory was 4,520, and that the total number of cars from Whiting was 2,373, making the per cent of the total shipments from Whiting 34.5 per cent. Is that correct?—A. That is, sir.

Q. Have you also caused to be prepared a map showing the territory tributary to the Grand Junction and Evansville gateways?—A. I have.

(A map was marked Defendants' Exhibit 171.)

(A recess was here taken until 2 o'clock p. m., at which time the examination was resumed.)

Q. With respect to defendants' Exhibit 170, the statement is: "Statement of carload shipments from various Standard refinery points to the territory south of Kentucky and Virginia and east of the Mississippi River (but not including Mississippi River points or

the cities of Mobile and Pensacola)." Why were the Mississippi River points and Mobile and Pensacola excluded in the making up of that statement?—A. Because they are on a different rate-making basis.

Q. Different than what? Different than the other territory indicated there?—A. Yes, sir.

Q. Now, the balance of the territory indicated there is the
10003 territory tributary to Grand Junction, in getting the benefit of the Grand Junction rate.—A. Grand Junction and Evansville, Cincinnati and Louisville combinations.

Q. But the Mississippi River points and Mobile and Pensacola did not get the benefit of the Grand Junction rates?—A. The rates to those points are made on an entirely different basis. They are prorated through.

Q. I show you defendants' Exhibit 171, that large may. Will you please explain somewhat in detail the theory upon which that map is constructed?—A. This map, which shows the States of Tennessee, North and South Carolina, Georgia, Alabama, Mississippi, and two or three outlying States, is constructed for the purpose of showing the territory that was available to the so-called Grand Junction combination. In addition to the various State boundaries and different colored lines showing various railroads in the South, there is a triple red line. The territory included within that red line is the territory to which rates are shown in the southern railway tariffs applying south of Grand Junction.

Q. That is to say, the territory within the red lines that you have described is the territory that gets the benefit of the Grand Junction rate?—A. That is correct.

Q. The farthest point east is Columbia, South Carolina, is it not?—A. Yes, sir.

Q. It shows on the easternmost point of the red lines which you have described, and the farthest point west is Rolling Fork, Mississippi, just east of the Mississippi. Is that right?—A. That is right.

10004 Q. And the farthest point north seems to be Clarksville, Tennessee, and Jellico, Tennessee?—A. Yes.

Q. What is the farthest point south?—A. The farthest point south shown on the red line is Quitman, Georgia.

Q. In the southeast, and in the southwest?—A. Summit, Mississippi.

Q. Now, those towns named give you four or five points by which those red lines that you have talked about are clearly indicated on the map?—A. That is correct.

Q. And, as I understand you, within the territory shown by those red lines, the Grand Junction rates, together with the rates of the southern roads from Grand Junction out, were available?—A. That is true. It is also intended that the territory within these red lines include the territory that was available to both the Grand Junction

and the Evansville combinations on shipments from Whiting, Indiana.

Q. Now, you have excluded certain portions of the Atlantic coast States. Why did you do that?—A. I excluded certain portions of the Atlantic coast States because in some instances the Evansville and Grand Junction combination was not available, and also for the reason that to many of the points east and southeast of the red line such points were supplied exclusively from the Atlantic coast points.

Q. And not from Whiting?—A. And not from Whiting, and therefore I felt they should be eliminated, fairly so, to both sides of this case, in making a comparison of the amount of tonnage that
10005 went into the territory available to Evansville and Grand Junction combinations.

Q. Now, as I understand Mr. Durand's testimony, it was substantially to the effect that all of the territory that you have indicated as lying within the red lines in question was supplied, practically in its entirety, from the Whiting refinery.—A. That idea is very clear in my mind from the testimony that some one has given in this case. I do not say who testified to it, because I do not recall.

Q. Have you caused to be prepared a statement showing the refinery sources of the oil shipped by the Standard Oil Company into the territory indicated as being within the red lines on defendants' Exhibit 171 for the year 1905?—A. I have.

Q. I show you defendants' Exhibit 172. Is that the statement in question?—A. Yes, sir.

Mr. ROSENTHAL. I offer defendants' Exhibit 172 in evidence.

Mr. KELLOGG. In defendants' Exhibit 172 you have 632 cars, during the year 1905, from Whiting via Evansville. None of that went through Grand Junction.

WITNESS. The total 632 cars shown on that exhibit from Whiting, Indiana, via Evansville, did not go through Grand Junction.

Mr. KELLOGG. And the 1,382 cars did?

WITNESS. The 1,382 cars, shown as being shipped from Whiting via Grand Junction, did go through Grand Junction.

Mr. KELLOGG. The 632, then, went on the regular combination from Evansville, and the 1,382 on the combination via Grand Junction.

WITNESS. The 632 went via Evansville on such rates as were applied.

10006 Mr. KELLOGG. I know, but I want to separate them.

WITNESS. One went on the Evansville combination and the other on the Grand Junction combination.

Mr. KELLOGG. All of the 1,382 cars went on the 13-cent rate?

WITNESS. Yes, sir.

Mr. KELLOGG. To Grand Junction?

WITNESS. Yes, sir.

Mr. KELLOGG. That is what I am trying to get at. That rate was taken out on December 11, 1905, was it not, so this is not a full year?

WITNESS. That is true. The Grand Junction rate was taken out sometime in the early part of December, 1905, and the 1,382 cars

shown hereon were shipped in the year 1905 prior to the date that the Grand Junction tariff was taken out.

Mr. KELLOGG. And the 632 cars that went via the Evansville——

WITNESS. Were for the full year.

Mr. KELLOGG. For the full year of 1905?

WITNESS. Yes, sir.

Mr. KELLOGG. Then, the 8¼-cent rate to Evansville was taken out on the 1st of December, 1905, was it not?

WITNESS. That is correct; yes, sir.

Mr. KELLOGG. Thereafter the rate was the same as via Louisville or Cincinnati?

WITNESS. Thereafter for the balance of the month of December, 1905, after the 8¼-cent rate was taken out, the shipments moved on the 11-cent combination.

10007 Mr. KELLOGG. Are there any towns in defendants' Exhibit 172 that are not within your double red lines on defendants' Exhibit 171, which is known as the Grand Junction line?

WITNESS. They are all included within that red line. I have not done all the work myself, but they have been carefully checked, and everything outside of the red line has been excluded from these figures.

Mr. KELLOGG. Do I understand that the territory covered by defendants' Exhibit 170 is the same territory as covered by defendants' Exhibit 172?

WITNESS. The territory covered by defendants' Exhibit 170 is the entire territory south of Kentucky and Virginia and east of the Mississippi River, but not including Mississippi River points or the cities of Mobile and Pensacola.

Mr. KELLOGG. Then, the statement "Baltimore and South Atlantic seaboard points, 3,538 cars," in defendants' Exhibit 170, are cars that went principally to that territory east of this territory included within the double red lines?

WITNESS. No; the exhibit shows where they went.

Mr. KELLOGG. I do not think defendants' Exhibit 170 does.

WITNESS. They went into the territory south of Kentucky, as the exhibit explains, Mr. Kellogg, and includes the points within the red lines and the points outside of the red lines.

Mr. KELLOGG. I do not think you understood my question. I say the 3,538 cars shipped from Baltimore to South Atlantic seaboard points. What does that mean—"Baltimore and South Atlantic seaboard points?"

10008 WITNESS. It means shipments were made from Baltimore and South Atlantic seaboard points.

Mr. KELLOGG. Then I should not have said "to." What I mean is this: Those shipments made from Baltimore and South Atlantic seaboard points, 3,538 cars, must have gone principally east of the territory within the double red lines?

WITNESS. Why, they were scattered all over the South. I could not say how far they went east of the——

Mr. KELLOGG. No; but your figures would be wrong if that is not true, because there were only 3,538 cars shipped into this entire territory according to defendants' Exhibit 172.

WITNESS. Defendants' Exhibit 172——

Mr. MILLER. Defendants' Exhibit 172 is limited to Whiting, isn't it?

Mr. KELLOGG. Oh, no; that includes it all.

Mr. MILLER. Oh, yes; it is a comparison from Whiting, that is all.

Mr. KELLOGG. I think that could be figured out from both exhibits.

WITNESS. It can be figured out from both exhibits.

Mr. KELLOGG. Is December a heavy month for the shipment of oil into the South?

WITNESS. I can not answer that. As compared with the other eleven months in the year, I do not know.

Mr. KELLOGG. They are always heavier in the winter than in the summer in the South, aren't they?

WITNESS. I would not care to answer as to details of trade matters; I know nothing about them.

Mr. KELLOGG. Those are not trade matters; those are ship-
10009 ping matters. I notice in defendants' Exhibit 170 the following statement: "(b) Commencing about 1903, there was a considerable movement of refined oil from Texas into the territory mentioned. This oil was purchased at Chaison (Beaumont) and shipped via New Orleans in tank cars, and a limited quantity brought by bulk boat to New Orleans, thence by tank cars to destination." Is that included within New Orleans and Chaison in your Exhibit 172?

WITNESS. That is a reference to the shipments from Chaison to New Orleans, as shown on that exhibit.

Mr. KELLOGG. Will you have prepared, Mr. Felton, so you may state on the cross-examination how much of those shipments were lubricating oil?

WITNESS. Mr. Kellogg, I am afraid the date of the cross-examination will be put off quite indefinitely.

Mr. KELLOGG. I notice 226 cars from Franklin. There is a good deal of lubricating oil shipped to the railroads in that country, isn't there?

WITNESS. Yes, sir; I imagine there is.

Mr. KELLOGG. And this includes lubricating, doesn't it?

WITNESS. Whatever the quantity of oil is as shown there as being shipped from Franklin, it includes shipments from the Galena-Signal Oil Company and also from the Eclipse Works of the Atlantic Refinery; all kinds of oil.

Mr. KELLOGG. What I want to get at is this: Defendants' Exhibits 170 and 172 include all kinds of oil—lubricating and others?

WITNESS. All kinds of oil; yes, sir.

10010 Mr. KELLOGG. If it is too much work to prepare it, if you can give us a fair estimate, that will do.

Mr. ROSENTHAL. We would be very glad to do that, because we are concerned about that as well as you are. We want, if possible, to get

it down to a basis excluding as much as we can the lubricating oil which is sent to the railroads.

Mr. KELLOGG. All right.

By Mr. ROSENTHAL:

Q. On Government's Exhibit 533, being a tariff of the Chicago & Eastern Illinois, with I. C. C. number 394 and G. F. D. number 10445, appears the notation: "Waybill per division sheet." Have you the division sheet there referred to?—A. I have a copy of a division sheet; yes, sir.

Q. Is the document that you have before you now marked Defendants' Exhibit 173?—A. It is.

Q. How do you identify it with the waybill referred to on the tariff?—A. Defendants' Exhibit 173 reads: "Chicago & Eastern Illinois Railroad Company. Freight department. Division sheet to be used in connection with G. F. D. No. 10445, oil, carloads, from Dolton, Illinois, to Grand Junction, Tennessee." It then provides for the division of the rate through from Whiting to Grand Junction.

Q. There is noted on there some such language as this: "Strictly private." Read that, please.—A. At the bottom of the sheet, just above the names of the railroad officials, appears the following:

"This issue is strictly private; it must not be posted or shown
10011 to other than employes of the companies directly interested."

Q. You say the names of certain employes appear thereon?—A. Yes, sir.

Q. What are their names?—A. H. H. Rhodes, A. G. F. A.; S. J. Cooke, A. G. F. A.; William Campbell, G. F. A.—meaning that those three men are assistant general freight agents and general freight agent, respectively, of the Chicago & Eastern Illinois Railroad.

Q. Does that division sheet, which was to be restricted to the use of the employes of the railroad companies, indicate what the rate was from Dolton to Grand Junction?—A. It shows in full and in detail the division of the earnings from Whiting to Grand Junction, one matter of detail being lacking, and that is it does not show the division of earnings between the Chicago & Eastern Illinois and the Evansville and Terre Haute railroads. But that feature was divided on other percentages. It shows the division of the rate at the Ohio River, Evansville.

Q. Now, what were the companies that were directly interested in this division sheet?—A. The Chicago Terminal Transfer Company, by reason of its switching charge to Dolton; the Chicago & Eastern Illinois and Evansville & Terre Haute, by reason of earnings Dolton to Evansville; then there was a charge of one-half cent per 100 pounds for getting across the river at Evansville; and then the word "South" appears, meaning the Illinois Central from Evansville to Grand Junction.

Q. And it was the employes of those roads that were to have access to this division sheet?—A. The words "Strictly private"
10012 on there were, I expect, from my long experience in issuing division sheets of that kind, so as not to let other railroads

know the basis of dividing rates as in force between those interested in this traffic.

Q. If the division sheet, therefore, were in the hands of the Illinois Central agent at Grand Junction, it would show to him upon its face, and to all other railway employes in whose hands that division sheet was, that the rate from Whiting to Grand Junction via the routes there indicated was 13 cents?—A. It would.

Q. What relation is there between a division sheet of that kind and the waybills that the railway companies prepare?—A. The waybills would be made out in accordance with the terms and instructions of that division sheet, for the reason that the tariff says "Waybill in accordance with division sheet."

Mr. KELLOGG. That is objected to as immaterial.

Q. You say the tariff provided that the waybills were to be made out in accordance with division sheet. Please point that out on the tariff.—A. Tariff G. F. D. 10445, I. C. C. 394 contains the following instruction——

Q. That is the tariff of the Chicago & Eastern Illinois making a 13-cent rate from Dolton to Grand Junction?—A. Yes, sir. It reads, "Waybill per division sheet."

Q. Now, what does that mean?—A. That calls attention of the agent to the fact that he must consult a division sheet which by some reference is connected up with this tariff before he can make his waybill.

Q. That is to say, the agent of the Chicago & Eastern Illi-
10013 nois, who makes out the original waybill is instructed in the making out of that waybill to consult the division sheet?—A. That is correct.

Q. And consulting the division sheet, what would he ascertain with respect to the rate?—A. He would find unusually explicit details, an example being made of a carload weighing 40,000 pounds, showing the charges on which he should make his waybill from Dolton to Evansville, and the Ohio River percentage charge, and the proportion to be assessed by the Illinois Central Railroad south of Evansville to Grand Junction. Under this division sheet two waybills would be necessary—one from Dolton to Evansville, and another from Evansville to Grand Junction.

Q. So that if the agent followed the instructions of the tariff and the division sheet and waybilled in accordance therewith, the 13-cent rate would have appeared upon the waybill?—A. It would.

Q. And if the 13-cent rate did appear upon the waybill, Mr. Seabrooke, the joint agent of the Illinois Central and the Memphis & Charleston at Grand Junction, would receive those very waybills, would he not?

Mr. KELLOGG. That is entirely incompetent and immaterial and not within the knowledge of Mr. Felton. He does not pretend to say it was done, but what should have been done. As a matter of fact, it was not waybilled in that way, but it was blind billed.

Mr. ROSENTHAL. As a matter of fact it was not until after this date.

10014 Mr. KELLOGG. Was not what?

Mr. ROSENTHAL. Blind-billed. Hurlbut's letter was not written until three weeks after this.

(The question was read.)

A. He would. He would have received the waybill from Evansville to Grand Junction, showing that the traffic moved on a rate from Dolton and Whiting to Grand Junction.

Q. I show you defendants' Exhibit 174. What is that, in so far as it has any relation to Government's Exhibit 533?—A. Defendants' Exhibit 174 is tariff G. F. D. No. 10084, I. C. C. No. 333, naming a 13-cent rate on oil from Dolton and Whiting to Grand Junction, Tennessee, effective September 15, 1897. This tariff I. C. C. 333 was cancelled, effective February 1, 1898, by a cancellation notice, No. 330, I. C. C. 388, issued by the Chicago & Eastern Illinois Railroad, as appears from defendants' Exhibit 174–A. I have nothing before me showing that there was any issue between the cancellation of I. C. C. 333, which cancellation was effective February 1, 1898, and the issue of another tariff, I. C. C. 394, which also named a 13-cent rate from Whiting and Dolton to Grand Junction, effective February 8, 1898, Government's Exhibit 533.

Q. Referring to defendants' Exhibit 174, being the tariff that was issued making a 13-cent rate from September 15, 1897, and which continued in force until February 1, 1898, do you find on the face of that tariff the same instructions, to wit, "Waybill per division sheet?"—A. I do.

Q. And, again, if the instructions on the tariff were followed by the agent making out the waybill, those waybills

10015 would have shown upon their face the 13-cent rate from Dolton and Whiting to Grand Junction, if the ordinary course of railroad business was followed in that regard?

Mr. KELLOGG. That is objected to as incompetent and immaterial.

A. That is correct.

Q. Now, a waybill made out by the C. & E. I. agent at Dolton would accompany the car through to destination, would it not?—A. No, sir.

Q. It would accompany it how far?—A. It would accompany the car as far as Evansville, or it might be sent to the agent at Evansville in an envelope, the car going from Dolton to Evansville on what is called a running slip. Then the Illinois Central would make a waybill in accordance with the instructions on this division sheet from Evansville to Grand Junction, showing the through rate of 13 cents and all its divisions. That waybill might accompany the car, or it might be sent by mail to the agent at Grand Junction, the car running from Evansville to Grand Junction on a running slip or some card waybill, whatever the method of the railroad might be.

Q. So that the agent at Grand Junction, if the instructions found on the tariff had been followed, from September, 1897, on, must have

known that the rate from Dolton and Whiting to Grand Junction was 13 cents; is that not so?

Mr. KELLOGG. That is objected to as calling for the conclusion of the witness.

A. He must have known that during the period that the tar-
10016 iffs bore the instructions to waybill in accordance with the division sheet, if nothing else had been issued to change those instructions.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 173, 174, and 174–A, each of them having just been furnished me by the Government at my request, except the division sheet.

Mr. KELLOGG. 174 and 174–A were put in by the Government, weren't they?

Mr. ROSENTHAL. No; Mr. Durand testified from them, but made no mention of the notation "Waybill per instructions."

Mr. KELLOGG. I do not object to those. They are practically in evidence. I want to ask a question or two about defendants' Exhibit 173. I notice that defendants' Exhibit 173 is a division sheet issued February 3, 1898. You do not know anything about the division sheets preceding under these tariffs 174 and 174–A?

WITNESS. That is the only division sheet that I have.

Mr. KELLOGG. Do you know that any shipments were made at all from February 3, 1898, to March 1, 1898, at which time Mr. Hurlbut's letter would take effect, over the C. & E. I., Evansville & Terre Haute, and the Illinois Central to Grand Junction?

WITNESS. I have made no inquiries whatever along that line.

Mr. KELLOGG. So, if there were no shipments there would be no waybills, would there?

WITNESS. If there were no shipments there would be no waybills.

Mr. KELLOGG. And if there were no waybills the agent at
10017 Grand Junction would not see any.

WITNESS. But the agent at Grand Junction would receive that division sheet whether he got any waybills or not.

Mr. KELLOGG. You don't know that he received it, do you?

WITNESS. That was sent to all——

Mr. KELLOGG. Do you know that that was sent to the agent at Grand Junction of your own knowledge? Now, are you testifying to that?

WITNESS. I will say this: That it shows it was sent to all interested parties, because it says so.

Mr. KELLOGG. Where does it say it is sent to all interested parties?

WITNESS. "It must not be posted or shown to other than employes of the companies directly interested," and the agent at Grand Junction was directly interested in handling that traffic.

Mr. KELLOGG. So you infer he got that, and that is all you know about it?

WITNESS. It says so.

Mr. KELLOGG. Evidently it was intended to be kept secret.

WITNESS. Yes; secret from other roads. He had that information, whether he got it from the waybills, if any traffic moved, or he got it from the division sheet whether any traffic moved or not.

Mr. KELLOGG. But you do not know of your own knowledge that that was ever sent to the agent at Grand Junction, do you?

Mr. ROSENTHAL. He just said he does not know; that he
10018 only infers from the instruction and the course of business.

WITNESS. That is correct.

Mr. KELLOGG. This division sheet only instructs how the oil was to be billed as far as Evansville.

WITNESS. And shows the proportion beyond.

Mr. KELLOGG. Yes; but it does not give any instructions how it should be billed beyond Evansville to Grand Junction, does it?

WITNESS. The agent at Evansville had the instructions.

Mr. KELLOGG. Well, does it give any instructions?

Mr. ROSENTHAL. Let him answer. Go ahead with your answer, Mr. Felton.

WITNESS. I will have to answer you just a little bit in detail. (Looking at defendants' Exhibit 173.) That is right, isn't it?

Mr. KELLOGG. It seems to me you can answer the question as to whether that division sheet gives any instruction as to how the oil is to be billed from Evansville to Grand Junction.

WITNESS. Yes, sir; it does.

Mr. KELLOGG. Where?

WITNESS. It says to use 52.1 per cent of the rate after making the deduction for the Chicago Terminal Transfer switching and the Evansville Bridge toll.

Mr. KELLOGG. It allows the Illinois Central that part of the rate, but it does not say how they were to waybill, does it?

WITNESS. They were to bill it in accordance with that proportion.

10019 Mr. KELLOGG. That is an instruction to the Chicago & Eastern Illinois employees, isn't it?

WITNESS. No, sir; not particularly; it is issued to all——

Mr. KELLOGG. Whom is it issued by?

WITNESS. By the Chicago & Eastern Illinois Railroad Company, and it shows that the agent at Evansville, whose road is a party to the tariff, must turn that car over to the Illinois Central. It does not show that the freight charges are prepaid. That leaves the question of the freight charges to follow, if necessary. It shows that the rate divides and allows the road south of Evansville 52.1 per cent, if I am giving the figures correctly, and therefore is a billing instruction to the agent at that point.

Mr. ROSENTHAL. The agent of what road at that point?

WITNESS. The Illinois Central.

Mr. ROSENTHAL. To do what?

WITNESS. Giving him the figures on which to bill the car from Evansville to Grand Junction.

Mr. ROSENTHAL. On which to waybill the car?

WITNESS. On which to waybill the car.

Mr. KELLOGG. You do not know what other instructions were given, do you?

WITNESS. I am only testifying from that division sheet.

Mr. KELLOGG. Now, on February 24, of the same year, 21 days later, Mr. Hurlbut, the general freight agent of the Illinois Central, directed that those——

10020 Mr. ROSENTHAL. I shall have to object to that at this time upon the ground that that is not cross-examination.

Mr. KELLOGG. I haven't asked him the question yet.

Mr. ROSENTHAL. Well, you have gone far enough to warrant me in objecting.

Mr. KELLOGG. To warrant you in suspecting, eh?

Mr. ROSENTHAL. Well, both suspecting and objecting.

Mr. KELLOGG. I think you may suspect. But please let me ask him the question. On February 24th, 21 days later, Mr. Hurlbut, general freight agent of the Illinois Central, directs Mr. Campbell, of the Illinois Central, as follows: "In view of the circumstances which surround the making and application of the tariff and with which you are of course entirely familiar, we believe that it would be advisable to arrange to have the shipments waybilled through prepaid, which means not to show any rates or divisions of same."

Mr. ROSENTHAL. Now, just a minute. Mr. Kellogg has read that wrong and interpreted it wrong. He is referring to an alleged letter that was offered in evidence in Washington, which has never been proved in this case, or properly proved, and he is going away beyond the scope of what he has any right to do at this time, and I will have to instruct you, Mr. Felton, not to get into any controversy with him on that subject-matter just now.

Mr. KELLOGG. I am not going to have any controversy. I just want an answer.

Mr. ROSENTHAL. No; you don't want an answer.

Mr. KELLOGG. Yes; I do.

10021 Mr. ROSENTHAL. That is not what you are after. You want him to read that letter, that is all.

Mr. KELLOGG. Now, will you please answer?

Mr. ROSENTHAL. No.

WITNESS. I think I will not answer just now, Mr. Kellogg.

Mr. KELLOGG. Now, unless there were some shipments made between February 3, 1898, the date of the division sheet, and the time this letter went into effect——

Mr. ROSENTHAL. If it ever did go into effect.

Mr. KELLOGG. There would not be any waybill showing that rate, would there?

Mr. ROSENTHAL. Now, if the moon were made of green cheese, and you know all about it, you might be able to answer the question.

Mr. KELLOGG. You are basing all your questions on "ifs" that are not true and improbabilities. Now, do you know that one car of oil

was shipped to Grand Junction during those dates, waybilled under that instruction?

Mr. ROSENTHAL. During what dates? From September?

Mr. KELLOGG. From September until March 1, 1898.

Mr. ROSENTHAL. I submit that he has already answered that several times.

Mr. KELLOGG. Well, do you? You can answer that.

WITNESS. Shall I answer?

Mr. ROSENTHAL. Surely.

WITNESS. I haven't made any investigation.

Mr. ROSENTHAL. Mr. Felton, is it at all probable that the
10022 Chicago & Eastern Illinois would have had in effect a 13-cent rate from September, 1897, to February, 1898, and have taken the trouble to cancel it and immediately replace it with another 13-cent tariff, without there having been any traffic move under that tariff from September to February?

WITNESS. Very improbable.

Mr. KELLOGG. Do you know there was any? It is a very easy matter for you to determine, is it not?

Mr. MILLER. Rather than speculate.

Mr. ROSENTHAL. Oh, we will be very glad to determine it, now that you have asked the question, and will give you the answer in detail before we get through with this case, showing just what the movement was between those months. Please make a note of that, Mr. Martyn.

Mr. KELLOGG. Now, as a matter of fact, do you know that the oil was not blind billed during that very time?

WITNESS. I made no inquiries along that line one way or the other.

Mr. KELLOGG. You know it was blind billed afterward, do you not?

WITNESS. I have heard some testimony given to that effect; that it was afterward.

Mr. KELLOGG. That is all.

10023 Q. I think it appears from the testimony in this case that the rate from Louisville to southern points and from Evansville to southern points is 4½ cents less than from Cincinnati to southern points. Do you know whether the rate from Cleveland to Cincinnati during the same period of time that that situation just described by me existed was 4½ cents less than from Cleveland to Louisville and Evansville?—A. Yes. I have tariffs showing that the rate from Cleveland to Cincinnati was considerably less than the rate from Cleveland to Louisville and Evansville. I would like to read from the tariffs before I go into details.

Q. Do you know how long that situation has existed?—A. For a great many years.

Mr. KELLOGG. You are talking about oil rates, are you?

WITNESS. That is what I am testifying about.

Q. Oil rates; yes, sir.—A. I am now reading from Tariff D–5915. It also has another reference, S. T. No. 338, issued by the New York, Lake Erie & Western Railroad Company.

Q. When?—A. It is a joint carload oil tariff from Cleveland, Ohio-Newburg, Ohio, taking effect September 3, 1888.

Q. That was about three years before the Whiting refinery was in operation?—A. I so understand.

Q. What does that tariff, so issued by the Erie road in 1888, show with respect to the Cleveland-Cincinnati rate and the rates south and the Cleveland-Louisville rate and the rates south of Louisville?—

A. This tariff does not show any rate south. This tariff only
10024 names the rates to the Ohio River; not a joint through tariff. It reads "Joint carload oil tariff," but it does not apply to points south of the Ohio River. On page 12 it names a rate of 8½ cents per 100 pounds to Cincinnati.

Q. That is from Cleveland to Cincinnati?—A. From Cleveland to Cincinnati. The word "carload" appears on the first page of the tariff. It does not in the rate columns. On page 24 it names a rate of 15½ cents per 100 pounds to Evansville, Indiana, from Cleveland. On page 24 it also shows a rate of 13 cents per 100 pounds to Louisville, Kentucky.

Q. So the rate from Cleveland to Cincinnati under this tariff issued in 1888 on petroleum and its products was 8½ cents. Is that right?—A. That is right.

Q. And from Cleveland to Louisville it was 13 cents. Is that right?—A. That is right.

Q. And to Evansville it was how much?—A. 15½ cents.

Q. So before the Whiting refinery was constructed—several years before it was constructed—that same difference in favor of Cincinnati from Cleveland, as compared with Louisville and Evansville, existed?—A. The differences appear as I have quoted from this Erie tariff.

Q. Do you know whether at that same time——A. I would like to say, before you leave there, that this tariff supersedes another one. It supersedes Tariff 192, dated October 12, 1887. I was unable to find anywhere a copy of that earlier tariff.

10025 Mr. KELLOGG. I don't suppose it is necessary to read those tariffs. The same differential exists today.

Q. And, as shown by the 1887 tariff, do you find the same differences then existing?—A. I could not locate a copy of the 1887 tariff; but if I may be permitted to say, some of the old rate men of the Erie road said the rates were the same.

Mr. KELLOGG. The same differentials exist today?

WITNESS. I think there are some little differences as compared to today; but, however, those are the rates.

Q. Do you know whether at that time Evansville and Louisville took a 3½ or 4 or 4½-cent lower rate to points south than Cincinnati?—A. I understand so; but I would require the tariffs to point it out specifically.

Q. Have you any tariffs showing what the rates were from Corry, Franklin, Reno, and Oil City, Pennsylvania, as early as September, 1888, to Cincinnati and to Louisville and Evansville?—A. I have.

Q. What tariffs have you that show that?—A. I have New York, Lake Erie & Western Railway Company's Tariff D-5946, S. T. No. 339, Joint Carload Oil Tariff from Corry, Franklin, Reno, Oil City, Pennsylvania, taking effect September 3, 1888.

Q. Now, will you give us the rates, please, between the points named and Cincinnati, Louisville, and Evansville?—A. On page 12 of that tariff I find the rate to Cincinnati from Corry, Franklin, Reno, Oil City to be 12 cents per 100 pounds.

Q. And to Louisville and Evansville?—A. On page 24 I
10026 find the rate to Evansville to be 18½ cents and on the same page (24) to Louisville, Kentucky, 17 cents per 100 pounds.

Q. What is the date of that tariff?—A. September 3, 1888. This also canceled some earlier tariffs issued in 1887, copies of which I was unable to obtain.

Q. Have you also a tariff showing the rate at that time from Buffalo to Cincinnati, Louisville, and Evansville?—A. I have a copy of New York, Lake Erie & Western Tariff 6069; as nearly as I can tell it has the prefix "D." There are a lot of pencil marks on it. It also shows distinctly the number S. T. 341. It was effective September 3, 1888. It is a joint carload oil tariff naming rates from Buffalo, New York. On page 12 it names 12 cents per 100 pounds to Cincinnati, and on page 24 it names 18½ cents to Evansville and 17 cents to Louisville.

Mr. MILLER. These were tariffs naming rates over this railroad and combination of railroads into and through Central Freight Association territory, to the Ohio River.

WITNESS. These tariffs named rates to points in the so-called Central Freight Association territory.

Q. Now, Mr. Felton, without going through the tariffs, do you know generally whether the roads running south from Evansville and Louisville made a rate of 4 or 4½ cents less than did the roads south from Cincinnati, in order to equalize the four or four and one-half cents preference that Cincinnati had over Evansville and Louisville from points north?—A. You mean that Cincinnati had under Evansville and Louisville?

10027 Q. Yes.—A. Answering that question generally, that is true. I could not answer it specifically without the tariffs, but I know that to be generally correct.

Q. That would be necessary for the roads running south from Evansville and Louisville, in order to enable them to get any of the business that originated in the North, as against roads running south from Cincinnati, would it not?—A. That is true.

Q. Have you caused to be analyzed and examined Government Exhibit 586, with a view of ascertaining its accuracy?—A. I have.

Q. I show you defendants' exhibit marked 146 for identification, which you identified the other day in connection with the discussion of the Parkersburg-Marietta situation. Does that contain a list or a table showing the inaccuracies of Government Exhibit 586?—A. It does.

Mr. ROSENTHAL. I now offer in evidence the document marked Defendants' Exhibit 146 for identification, and ask that it be marked Defendants' Exhibit 146.

Q. Now, referring to defendants' Exhibit 146, where do you get the list of towns thereon contained?—A. I have not a copy of it before me, but they were taken from petitioner's Exhibit 586.

Q. Taking the first town there, Toledo, Ohio, to Greensboro, North Carolina, that shows the rate as shown by Government Exhibit 586 to be 48½ cents, does it not?—A. It does.

Q. What, as a matter of fact, was the correct rate?—A. 48 cents per 100 pounds.

10028 Q. As shown by what tariffs?—A. 48 cents per 100 pounds, as shown by Cincinnati, Hamilton & Dayton tariff, I. C. C. 1156, naming a 27-cent rate to Richmond, Virginia, and the Southern Railway Company's tariff, I. C. C. 5618, naming 21 cents from Richmond to destination.

Q. Now, when you get down to Wilmington, North Carolina, you show that Government Exhibit 586, with respect to the rate from Toledo to Wilmington, is inaccurate to the extent of 7½ cents, do you not?—A. That is correct.

Q. And that its exhibit in respect to the rate from Cleveland to Wilmington is inaccurate to the extent of 11 cents?—A. That is correct.

Q. And to Charleston, South Carolina, inaccurate to the extent of 9 cents?—A. 9 cents from Cleveland; yes, sir.

Q. And in every instance you have designated on defendants' Exhibit 146 the tariffs that were your authority in the making up of the correct rates and the showing of the inaccuracies in the Government exhibit, have you?—A. We show the tariff rates and in almost every instance the basing point on which the combination was built up.

By Mr. KELLOGG:

Q. Now, I see on your Exhibit 146 a large number of towns here with a half a cent difference on account of a bridge toll at Louisville?—A. Yes, sir.

Q. As a matter of fact, was not that bridge toll absorbed by the railroad companies?—A. The tariffs do not so indicate.

Q. Well, I know; but isn't it a fact that the railroads absorbed that bridge charge?—A. Not according to their tariffs.

Q. That is not the question. I want to know whether this 10029 is accurate.—A. It is accurate, from the tariffs.

Q. I know, but isn't it a fact that the railroads absorbed the bridge charge?

Mr. ROSENTHAL. Of a half cent?

Mr. KELLOGG. Yes, sir.

A. Not from the tariffs.

Q. I have not asked you that. I have asked you as a matter of fact whether on all shipments from Whiting——A. Why, Mr. Kel-

logg, do you suppose I am going to say that the railroad absorbs a bridge toll of a half cent when this tariff filed with the Interstate Commerce Commission says that it does not?

Q. As a matter of fact, on all shipments from Whiting, Indiana, do not the railroads absorb that half-cent bridge toll across the river?—A. Not according to the tariffs.

Q. That is not the question I asked you.—A. Why, I can not answer any other way.

Mr. ROSENTHAL. He is asking for your knowledge independently.

WITNESS. I should like to answer to please you, Mr. Kellogg, but I am not going contrary to what the tariff says.

Q. From your knowledge independent of the tariffs, don't you know they did absorb those bridge tolls?—A. No, sir; I do not.

Q. Have you investigated? Do you know they did not?—A. I know the tariffs say they did not.

Q. Do you know of your own knowledge that they did not?—A. I do not know anything about it except what the tariffs say.

10030 Q. Then you made this up simply from the tariffs?—A. Yes, sir; that is pretty good authority, too, a tariff filed with the Commission.

Q. Now, if, as a matter of fact, the railroads did absorb that, then there is an error of a half cent, isn't there?

Mr. ROSENTHAL. No, no.

A. Why, if, as a matter—I will not answer that at all.

Q. Will you look up and see whether your company did actually pay that bridge toll or whether you didn't?

Mr. ROSENTHAL. Surely, we will look it up.

WITNESS. Sure.

Q. All right. Now, Mr. Felton, I notice all or nearly all of these changes are through Richmond. Most of them are through Richmond; from all the places except Whiting, and the difference in rate occurs by shipping through Richmond?—A. Yes, sir; it so appears.

Q. What is that rate out of Richmond which you refer to—a class rate?—A. I could not say without consulting the tariff.

Q. Where is your tariff? Have you got it here?—A. No, sir; while you are talking on that, Mr. Bogardus, who is sitting here, tells me that he always paid that half cent bridge charge.

Q. I am asking you to look it up personally, so you can swear to it.—A. I know, but still you have asked me in a general way, and I am now giving you in a general way that source of information that comes to me.

Mr. ROSENTHAL. Who is Mr. Bogardus?

10031 WITNESS. Mr. Bogardus is in direct charge of the traffic of the Standard Oil Company of Indiana, making shipments from Whiting.

Mr. ROSENTHAL. And in response to Mr. Kellogg's inquiry you have just now ascertained from Mr. Bogardus that the Standard Oil Company has always paid that one-half cent bridge toll?

WITNESS. That is correct.

Q. But has not the railroad, in settlement of the bill of freight, assumed it at the end of the settlement?—A. Mr. Bogardus tells me not. He says the Standard Oil Company have paid it.

Q. On shipments going beyond?

Mr. BOGARDUS. When prepaid to Louisville; yes, sir.

WITNESS. His answer is, "When prepaid to Louisville; yes, sir." I will look further.

Q. That is the question, whether they were prepaid to Louisville or prepaid to some other place.—A. Well, we will investigate that, sir.

Q. The question is whether, in the settlement of the freight, finally that bridge toll was absorbed by the railways.—A. We say it was not. We say we paid the half cent. Now, we will get some data on it.

Q. All right, that is the best thing to do. Now, you say in connection with this that the reason that the rate from Evansville and Louisville to these southern points is from 4 to 4½ cents lower than through the Cincinnati gateway is because Toledo and these other points have a lower rate to Cincinnati than they do to Louisville and Evansville north of the river?—A. The question was not put to me that
10032 way, if the stenographer will read it.

Q. Well, then, that Louisville and Evansville would have to have a 4 or 4½ cent less rate to the southern points in order to equalize with the higher rate they paid north of the river from Toledo and other points?—A. The question was, as I remember it, that the Louisville and Evansville lines could not get traffic from Toledo and Cleveland as against the Cincinnati line unless their rates were about the same—unless the through charge was about the same.

Mr. ROSENTHAL. To points south.

WITNESS. To points south.

Q. Now, that was because Louisville and Evansville, being farther away from Toledo and these other points, had to pay more to get the oil to Evansville and Louisville, wasn't it?—A. The distance is shown by a map already submitted in evidence, from Toledo to Evansville and Louisville, is greater than from Toledo to Cincinnati; yes, sir.

Q. And the rate is, say, from 3 to 4½ cents higher?—A. Something of that kind; yes, sir.

Q. So that for the railroads out of Louisville and Evansville to get the haul of any oil they had to make a rate as low as it was made through Cincinnati?—A. Naturally.

Q. Now, turning it around, after Whiting was established the rate was the same from Whiting to Cincinnati and Evansville, wasn't it?—A. Because the distance is the same.

Q. The rate was the same, wasn't it?—A. Yes, sir; but using your same argument for the rate, you used a question of dis-
10033 tance to show the difference in the rate from Toledo to Evansville as against Cincinnati.

Q. Now, the railroads leading south from Cincinnati, in order to get the Whiting business, were justified in making the same rates

from Cincinnati south as Louisville and Evansville were, weren't they?—A. If they wanted to, they could.

Q. So that it worked out that Whiting got the better of it?—A. No, sir; I do not see so at all.

Q. And according to your tables five times as much oil went from Whiting into that southern territory as went from Toledo, Pittsburg, and these other places. That is correct, isn't it?—A. The table speaks for itself. I do not recall the figures.

Q. Well, many times more, isn't it?—A. Whiting shipped quite heavily into the South via Evansville; yes, sir.

Q. A good deal more than these other places all put together?—A. I could not say.

Q. That is the table you swore to here a few moments ago?—A. You mean our business?

Q. All the business—your business.

Mr. ROSENTHAL. The table shows that it is what it shows.

WITNESS. You mean the Standard Oil Company's business?

Q. Yes.—A. You said all the business.

Mr. KELLOGG. No; all the oil.

WITNESS. Whiting shipped more than the others; yes.

Mr. MILLER. The question was so limited.

WITNESS. The question was all the oil business, and I said I didn't know, meaning I did not know what the so-called independents shipped.

10034 Q. I am talking about the oil of all the Standard Oil companies. They shipped several times as much from Whiting as from all these other places, didn't they?—A. Whatever the statement shows.

(Paper marked Defendants' Exhibit 175.)

By Mr. ROSENTHAL:

Q. Referring again to petitioner's Exhibit 586, have you caused to be examined the mileage distances as stated in that exhibit?—A. I have.

Q. Do you find any inaccuracies in that regard?—A. Quite a number.

Q. I show you defendants' Exhibit 175. Does that represent the mileage inaccuracies on petitioner's Exhibit 586?—A. It indicates that errors were found in a number of instances in the mileage; yes, sir.

Q. As shown in defendants' Exhibit 175?—A. Yes, sir.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 175.

By Mr. KELLOGG:

Q. Where did you get your distances from?—A. The statement shows there—distances shown by Official Railway Guide.

Q. Which Official Railway Guide? We had one here the other day——A. We had the latest one this time, in this case.

Mr. KELLOGG. They were wrong the other day.

WITNESS. We had the latest one in this case.

Q. The last Official Railway Guide?—A. Yes, sir. In this case Mr. Martyn just reminds me that we have the details showing how the mileage was figured.

Q. Let us take that. We can check it up easier from that.—
10035 A. (Handing paper to Mr. Kellogg.) There is the basis upon which those mileages were obtained.

Mr. KELLOGG. It is conceded in this case that the office stamp on petitioner's Exhibit 577, reading as follows: "Canceled by Amt. No. 1 to 10, effective 7/8/'03, 190—," was put upon the original tariff in the office of the Interstate Commerce Commission by Mr. Crossland, in charge of freight tariffs, on or about March 30, 1906, on the receipt of tariff, petitioner's Exhibit 579.

By Mr. ROSENTHAL:

Q. It seems to be contended by the Government on the record in this case that the advance that was made by the Galena-Signal Oil Company to the Illinois Central Railroad, in 1906, from $1.67 to $2.20, was due to the fact that about that time the Standard Oil Company gave to the Illinois Central a large increase in freight traffic. Do you know where Stoy, Illinois, is?—A. I do.

Q. Where is it?—A. It is on the Indianapolis Southern Railway, part of the Illinois Central system.

Q. And where is it in relation to the Illinois oil fields that were discovered and opened up two or three years ago?—A. Right at the spot.

Q. Is there any other railroad line than the Illinois Central that reaches Stoy, Illinois?—A. No, sir.

Q. Now, the Standard Oil Company has been a large purchaser of oil in the new Illinois fields, has it not?—A. It has.

Q. Have you caused to be prepared a statement of carload shipments of crude oil over the Illinois Central Railroad from the
10036 Illinois oil fields at Stoy, Illinois, to Whiting, Indiana, and the estimated cost of the same, comparing the year ending June 30, 1906, and the year ending June 30, 1907?—A. I have.

(Paper marked Defendants' Exhibit 176.)

Q. I show you defendants' Exhibit 176. Does that show the data in question, concerning which I have just asked you?—A. Yes, sir; it does.

Mr. ROSENTHAL. I offer defendants' Exhibit 176 in evidence.

By Mr. KELLOGG:

Q. These shipments were made by the Standard Oil Company only, were they not?—A. Yes, sir.

Q. Where did you say Stoy is?—A. Stoy is, I should say, in central eastern Illinois. It is located on the Indianapolis Southern Railway, a road which some time ago was acquired by the Illinois Central.

Mr. ROSENTHAL. To be definite, it was acquired by the Illinois Central in September, 1904, was it not?

WITNESS. That is so shown by either Poor's Manual or some other manual of statistics which I consulted.

Mr. ROSENTHAL. And that business, emanating from Stoy, therefore, was not competitive business, but of necessity had to pass over the Illinois Central?

WITNESS. Purely local to the Illinois Central.

Q. What other roads are there running through that oil field?—A. What do you mean by the word "field?"

Q. You know what an oil field is, don't you?—A. The oil field extends over a great area of country down there.

Mr. ROSENTHAL. I am now talking about the Stoy oil field.

10037 Q. How big is the Stoy oil field?—A. It was large enough to ship 4,513 cars in the year ending June 30, 1907.

Q. Stoy is a mere station, isn't it?—A. What kind of a station?

Q. A station on the Illinois Central Railroad?—A. It is a station on the Illinois Central Railroad.

Q. Now, the oil field is not right around the depot, is it?—A. I don't know how large the oil field is.

Q. You don't know anything about it?—A. The limits of the oil field?

Q. Yes, sir.—A. No, sir.

Q. You haven't any idea?—A. Never have been down there.

Q. Then, how do you know Stoy is the oil field?—A. Because I know these cars were shipped from Stoy.

Q. All you know about it is that the cars were shipped from Stoy?—A. That seems to be enough.

Q. Now, there is a large oil field there, isn't there?—A. There is an oil field in Illinois.

Q. A very large oil field, isn't there?—A. I don't know the size of it.

Q. The oil is pumped from the oil field to Stoy, isn't it?—A. I suppose that there is a pumping station there; yes, sir.

Q. And for all you know, it may come from all parts of that whole oil field?—A. No; that would not seem possible.

Q. Why not?—A. Because there were other shipping points.

Q. What are they?—A. Bridgeport is one.

Q. What road is that on?—A. Bridgeport is on the Baltimore & Ohio Southwestern.

10038 Mr. ROSENTHAL. Come again.

Q. What other one? The Baltimore & Ohio Southwestern Railroad connects with the Baltimore & Ohio and goes to Chicago, doesn't it?—A. And Casey is another.

Q. The Baltimore & Ohio Southwestern has a line in connection with the Baltimore & Ohio to Whiting, Indiana, hasn't it?—A. No; not that route. It would carry it away over into Ohio some place.

Q. Let us see about that. What other stations are there in the oil fields?—A. There is another station at Casey, Illinois.

Q. What road is that on?—A. That is on the crossing of the Vandalia and the C., H. & D. There are lots of ways of getting out, Mr. Kellogg.

Q. There are several ways of getting from that oil field to Whiting, aren't there?—A. Yes, sir.

Q. Now, you don't know but what all of the oil that comes to Stoy can be pumped to some other station and shipped over some other road, do you?—A. I could not conceive of that.

Q. You could not conceive of it?—A. No, sir.

Q. Let us see about that. The oil is collected from the wells by gathering lines, is it not?—A. That is true.

Q. They lead into main trunk lines?—A. I am not familiar with the method of the construction or the operation of pipe lines.

Q. You have not looked into that any?—A. Not at all.

Q. Well, I will find out how little you know about it, then—A. I will tell you right now that I do not know anything about
10039 it, so that will save you asking questions.

Q. I would rather have it in detail.

Mr. ROSENTHAL. Then I will have to ask you to reserve it until the cross-examination.

Mr. KELLOGG. Mr. Felton has presented a statement here that is not correct, and I am showing it.

WITNESS. Oh, Mr. Kellogg, do not say that. That statement is correct.

Mr. ROSENTHAL. Why, Kellogg would say that a statement that we copied verbatim from the Bible was incorrectly copied, you know, unless he himself copied it; simply for the sake, you know, of having something to say concerning the statement.

Q. Now, isn't it a fact, Mr. Felton, that this oil is pumped for some distance to Stoy?—A. I do not know anything whatever about the pipe line operations.

Q. You do not conceive for a moment that there are 4,513 cars of oil taken out of wells right around the station of Stoy, do you?

Mr. ROSENTHAL. Oh, yes; we do.

A. I say that I know nothing whatever about that Illinois oil field.

Q. How did you happen to know so much about Stoy?—A. Because when I noticed the statement was made about the increase I made inquiries as to where it came from, and I found that——

Q. That it was shipped from Stoy?—A. That there were 4,500 cars shipped from Stoy.

Q. I suppose it did not interest you to find out whether that
10040 came from a large area of oil fields or not?—A. Not at all.

Q. You wanted to convey the impression to the court that it could not be shipped from any station except Stoy?—A. I wanted to convey the impression to the court that that increase of $165,000 in the earnings of the Illinois Central had absolutely nothing to do with the Galena-Signal contracts, and that is the purpose for which this statement was prepared.

Q. Then, why did you testify that the oil could not be shipped over any other line?—A. I did not say so.

Q. You did not say that—all right.—A. I said that this shipment was local from Stoy.

Q. But you did not say that it could not have been shipped over some other line?—A. I don't know anything about where it came from.

Mr. ROSENTHAL. We will have to prove that by somebody else.

Mr. KELLOGG. You had better get somebody that knows more about it than he does.

Mr. ROSENTHAL. He knows all about what he has testified to.

(An adjournment was here taken until the morning of Friday, October 9th, 1908, at 10.30.)

10041 ROOM 677, FEDERAL BUILDING, CHICAGO, ILL.,
Friday, October 9, 1908—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison; on behalf of the defendants, Mr. Moritz Rosenthal, Mr. John S. Miller, Mr. Chauncey W. Martyn.

HENRY E. FELTON, recalled, and his direct examination resumed, as follows:

By Mr. ROSENTHAL:

Q. Mr. Felton, referring back again to defendants' Exhibit 166, your attention was yesterday called by Mr. Kellogg to the fact that you have instituted a comparison between a C. & E. I. tariff of 1892, as shown by Note C, and Lake Shore tariffs that became effective in 1896 and 1898, as shown by Notes A and B. Have you succeeded, since your attention was called to that, in finding any earlier tariffs of the Lake Shore road that you can cite on that exhibit as an additional reference?—A. I have succeeded in finding an older Lake Shore tariff. I have before me Lake Shore & Michigan Southern carload oil tariff No. 0. 8, corrected No. 2, taking effect November 20, 1891. This tariff, on page No. 6, names a rate from Toledo to Terre Haute, Indiana, via the Chicago & Eastern Illinois Railroad,
10024 of 10 cents per 100 pounds. So far I have been unable to get an earlier tariff naming a 13-cent rate to Evansville. I am advised by the Lake Shore tariff people that at the time this 10-cent rate prevailed to Terre Haute (that is, in 1891) the rate to Evansville was 13 cents.

Mr. KELLOGG. We will concede that. You need not hunt any tariffs on that point.

WITNESS. All right, sir; thank you.

Q. Now, will you add in ink as a note "A," right on the face of that exhibit, this additional tariff authority that you have?—A. Yes, sir; I have done so.

Q. Mr. Felton, do you know whether the Standard Oil Company has had a pipe line for the transportation of oil by pipe from Whiting, Indiana, to Chicago, and if so, for about how many years that line has been there?—A. I am informed that since practically the time that the Whiting refinery was built the Standard Oil Company

has had a pipe line running from Whiting as far into the city of Chicago as Hyde Park.

Q. So that at all times since then it would have been possible for the Whiting refinery, had it wished to get the benefit of Chicago rates from Chicago itself, by the construction of what are called loading racks to have piped its oil from the refinery to Chicago, and then loaded it from loading racks, or loaded it from tank stations directly into tank cars?—A. That is true.

Q. At a merely nominal additional cost?—A. Yes, sir.

Q. Who was the general counsel of the Chicago & Eastern Illinois Railroad in 1892, while you were freight agent?—A. W. H. Lyford, of Chicago.

10043 Q. Did you and your freight associates at about that time—1892—receive any advice from Mr. Lyford, as general counsel of your road, with respect to the necessity of filing a tariff with the Interstate Commerce Commission making a rate between Whiting, Indiana, and Evansville, Indiana?

Mr. KELLOGG. That is objected to as irrelevant and immaterial.

A. We did.

Q. What was that advice?—A. Mr. Lyford's advice was that we need not file any tariff naming a rate from a point in Indiana through Illinois back into Indiana again, nor a tariff issued from any point in Illinois running through Indiana back into Illinois again.

Q. And did you thereafter act upon that advice?—A. We did.

Q. Now, what freight reasons were there that existed at that time, in so far as the relations of the Eastern Illinois were then concerned, with other competing roads, that made it necessary for you, as the freight traffic man of that road, to call upon Mr. Lyford for the purpose of getting such advice?—A. We were competing with other roads that had straight Indiana or straight Illinois lines.

Q. Now, explain that a little more fully.—A. In making rates from Whiting, Indiana, to Evansville, Indiana, for example, we were competing with the Pennsylvania system, which could handle freight from Whiting, Indiana, to Evansville, Indiana, without going out of the State of Indiana.

Q. That is to say, the Pennsylvania had a direct connection from Whiting to Evansville over its lines and connecting lines

10044 without leaving the State of Indiana?—A. That is true. So far as Terre Haute was concerned, they used lines that were practically under their control, and entirely within their own system.

Q. How about the Illinois Central?—A. On the west, in competing with the Illinois Central on traffic for the central part of Illinois, we had lines working through Indiana from Chicago, while the Illinois Central had lines all within the State of Illinois.

Q. That is, the Illinois Central had its line from Chicago to the Ohio River entirely within the State of Illinois?—A. That is true.

Q. The Pennsylvania, then, in connection with that Whiting-Evansville traffic, and the Illinois Central, in connection with its

Chicago southern Illinois and central Illinois traffic, issued what kind of tariffs?

Mr. KELLOGG. One moment. That is objected to. The tariffs are the best evidence of that. I want to know what they are.

A. They were free to issue rates in any manner they chose, because their lines were all within one State.

Q. That is, when you say that they were free to issue them, do you mean that as a matter of fact between the points indicated they did issue what are known simply as state tariffs?

Mr. KELLOGG. That is objected to. The tariff is the best evidence. At least we should have a reference to it.

A. As I recall the situation now, they did.

Q. So that these roads could issue intrastate tariffs which they were under no obligation to file with the Interstate Com-
10045 merce Commission.—A. Yes, sir.

Q. Or make public?—A. Yes, sir.

Q. And the Chicago & Eastern Illinois, being confronted with that situation in connection with competitive traffic, thereupon put the question up to its counsel as to whether or not it, the Chicago & Eastern Illinois, was under any obligation to file its tariffs between two points entirely within the same State, even though in the passage of the freight it passed through some other State?

Mr. KELLOGG. Same objection.

A. It did.

Q. In the event that the Chicago & Eastern Illinois had filed its tariffs with the Interstate Commerce Commission, that would have created a situation where the competitive roads would have been advised of its rates without the Chicago & Eastern Illinois being in a situation in turn to be advised of the rates of these competitive roads?—A. Yes, sir.

Q. It appears, I think, from the testimony in this case that for some years after its issue in 1892 the C. & E. I. 8¼-cent tariff from Whiting to Evansville was not filed with the Interstate Commerce Commission. That made a rate on oil of 8¼ cents between those two points. What was the practice of the road at that time and for many years thereafter with respect to the filing of other tariffs, covering other commodities, in connection with traffic moving from one point in Indiana, out of the State of Indiana through Illinois and back to another point in Indiana?

Mr. KELLOGG. That is objected to as incompetent and
10046 immaterial. The tariffs are the best evidence, if such were made.

A. The inquiry that was put to Mr. Lyford was general in its scope. That is, it related to all classes of traffic, and as I recall the situation, the rule was applied to all classes of traffic. Mr. Durand, if I may so state, confirmed that at the time I appeared before Mr. Garfield in May, 1906. I asked him the question if he had not found that that was quite the practice, and he replied that he had.

Mr. KELLOGG. If you have any other tariffs of that kind, they ought to be produced, or reference made to them, or schedules. I object to the oral testimony of the witness generally as to the tariffs.

WITNESS. I have that referred to in a memorandum. Here it is. Here is what I base that statement on. May I read it?

Mr. KELLOGG. Let me see it first, please.

(Document inspected by Mr. Kellogg.)

WITNESS. I read from page 57 of my testimony before the Department of Commerce and Labor.

Mr. MILLER. That was produced here this morning by Mr. Durand.

WITNESS. Yes, sir.

Q. You mean that you refer to page 57 of your statement?—A. Of my statement, rather than testimony. I stated: "There is nothing attached to the files in the New York office except a straight, clean tariff of 8½ cents; and I think in confirmation of what I say, if you will take the time to go back, that you will find a great many tariffs along about that period in the files of the C. & E. I.
10047 R. R., from one State through another State back into the original State, that were not filed with the Commission." Mr. Durand's answer was: "That is very true." But they did not want it used outside of Indiana.

Q. Now, Mr. Felton, as late as October 3, 1906, and after the Chicago & Eastern Illinois became part of the Frisco system, did the Chicago & Eastern Illinois issue a tariff containing a definition upon the face of that tariff of what the Chicago & Eastern Illinois interpreted interstate traffic to mean?—A. It did.

Q. Have you the tariff before you?—A. I have before me Supplement No. 13 to G. F. D. No. 991 of 1905. The I. C. C. number of this supplement is 1845.

Q. In connection with what commodity was that tariff issued?—A. It reads as follows: "Rules for the guidance of agents at originating and junction points in connection with the regulations governing the transportation of meat and meat food products in interstate and foreign commerce under the act of Congress approved June 30, 1906." Under that appears the heading "Definition;" and under the word "Definition" I read the following: "Interstate and foreign traffic shall be understood to be traffic from a point in any State, Territory, or the District of Columbia, to a point in another State, Territory, or the District of Columbia, or to or from a foreign country."

Q. Mr. T. B. Westgate, one of the officers of the American Oil Company, located at Titusville, testified as a witness for the Government in this case at Cleveland at some considerable length, and introduced a great many railroad documents of one kind or
10048 another, tending to show, as he claimed, discriminations made by some of the New England roads in favor of the Standard Oil Company as against Titusville as a shipping point. Have you had those various documents before you for study and analysis that he introduced at that time?—A. I have.

Q. I show you defendants' Exhibit 177. Will you explain in detail that exhibit?—A. Defendants' Exhibit 177 is a statement showing a comparison of the cost of transportation to the American Oil Works on its barrel shipments, meaning oil in barrels, to various Vermont points, as testified to by Mr. Westgate, with the cost to the Standard in reaching the same points.

Q. That is to say, you have taken the actual shipments testified to by Mr. Westgate, and their points of destination as shown in the first and second columns of this exhibit, have you?—A. I have.

Q. And the third column shows the actual rate paid by Mr. Westgate, as testified to by him at Cleveland?—A. Yes, sir.

Q. Now, you have compared the actual rate paid by him with the rates which the Standard Oil Company would have been compelled to pay and did pay in all less than carload shipments, and also with their carload rates, in the event that shipments were made to those points via those routes by the Standard?—A. That is correct.

Q. Take your first point there, for example, Ludlow. Is that Ludlow, Vermont?—A. Ludlow, Vermont.

Q. In his shipment of November 20, 1900, made by the American Oil Company, Mr. Westgate paid at the rate of 39.4 cents per 100 pounds, as explained in "Note C," did he?—A. He did.

10049 Now, was that a less than carload shipment?—A. That was a carload shipment.

Q. And then in a shipment of March 18, 1901, to the same point, he seems to have paid 33 cents a hundred, and so on in connection with the other two shipments to Ludlow. Is that the fact?—A. That is a fact.

Q. What does the 41 cents under the head of cost to the Standard Oil Company to reach the same point from Olean mean, and the 31 cents? Take Ludlow and explain that situation right straight through.—A. You will note a reference letter "h," and you will find a note corresponding to that on the second page of this exhibit.

Q. What is the note that you find under the "h" reference?—A. "Except as otherwise stated, the cost to the Standard Oil Company, as here shown, is the same as appears in the tables, defendants' Exhibits 122 and 123."

Q. And after 31 cents I observe a note "f." What does that signify?—A. Note "f" signifies, as shown on the second page of the exhibit, that the carload rates are as shown in Rutland Railroad tariff, I. C. C., 421, effective December 10, 1900, plus the rate Olean to Rutland, as shown in defendants' Exhibit 120.

Q. And that is the way the 31 cents is made up, is it?—A. Yes, sir.

Q. Now, I notice throughout that exhibit a letter "g" frequently appears in the last column. What does that mean?—A. The note corresponding to reference "g" reads, "The Standard made no carload shipments to that point."

Q. And there in those cases you institute a direct compar-

10050 ison between the rate which Westgate actually paid and the

L. C. L., or less than carload rate which the Standard Oil Company was subjected to?—A. That is correct.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 177.

By Mr. KELLOGG:

Q. The column "Cost to the American Oil Company" sets forth Mr. Westgate's shipments, does it not?—A. The column "Cost to American Oil Company" sets forth the rates shown as testified by Mr. Westgate.

Q. Those are carload rates, all of them?—A. No, sir. The less than carload third-class rate is used on carload shipments; but those rates are applicable to less than carloads.

Q. They were all carload shipments?—A. As I recall the data, they were all carload shipments, using the less than carload rate.

Q. Now, the column "Cost to Standard Oil Company points from Olean" shows the less than carload rate?—A. The first column is less than carload; yes, sir.

Q. The Standard Oil Company made no less than carload shipments in there, did they, from Olean?—A. The reference "h" explains how that is made up.

Q. But the Standard Oil Company made no less than carload shipments from Olean?—A. That computation is based on a carload rate to Burlington and a less than carload rate out.

Mr. ROSENTHAL. Which the testimony in this case offered by the Government tends to show was the practice of the Standard.

WITNESS. That is the basis on which this exhibit was
10051 prepared.

Q. That is, the third column includes the less than carload rate out of Burlington in all cases?—A. I think you mean the fourth column, Mr. Kellogg.

Q. Well, the fourth column, then. That is the cost to the Standard Oil Company to reach same points as from Olean L. C. L.?—A. The column under "L. C. L." represents a less than carload shipment to destination. I think they are all based on Burlington. They may possibly be based on Rutland in some cases.

Q. As a matter of fact, did the Standard ship to those points from Burlington at less than carload rates, or did they reconsign the carload?—A. In some cases it is shown we had no carload facilities.

Q. I know; but in all cases——

Mr. ROSENTHAL. The charge in the Government's petition is (and this is prepared for the purpose of meeting that charge) that we shipped from Burlington at less than carload rates. That is the averment of the petition which this table is intended to meet.

Mr. KELLOGG. But they were secret rates, we say; the State rates that were not filed.

Mr. ROSENTHAL. Yes; but that they were less than carload rates, and this column shows, therefore, and is intended to show, exactly what we did pay under those alleged secret State rates, in the event that we made such shipments as the Government in its petition claims we made and alleges that we made.

Mr. KELLOGG. That is just what I am trying to get at.

Mr. ROSENTHAL. What you are trying to do——

10052 Q. Are these rates out of Burlington, which are included in this column under L. C. L., in all cases the secret rates or were they in some cases the less than carload published rates?

Mr. ROSENTHAL. I shall have to object to that, because——

Mr. KELLOGG. Well, it does not show on its face.

Mr. ROSENTHAL. Wait a minute—because it assumes that we had secret rates. There has not been any proof in this case——

Mr. KELLOGG. Hasn't there?

Mr. ROSENTHAL——offered by the Government tending to show that we had secret rates from Burlington out.

Mr. KELLOGG. That is merely your statement of it.

Mr. ROSENTHAL. My statement, in connection with the proof.

Mr. KELLOGG. That is entirely incorrect, though.

Q. Now, Mr. Felton, were these rates used from Burlington to make up this column L. C. L. to these particular points the published less than carload rates or were they the unpublished State rates?—A. Wherever the Government has alleged that we used an unpublished State rate, that rate has been used as a factor in arriving at these figures.

Q. We allege that you used them in all cases out of Burlington, don't we?

Mr. ROSENTHAL. Over the Rutland road.

WITNESS. Not over the Rutland; over the Central of Vermont.

Mr. ROSENTHAL. Over the Central Vermont. Wherever you have made that allegation we have taken the figures from your peti-

10053 tion, just as you have alleged them to have been paid, and adopted them as the basis for this comparison.

Q. Does your statement show which ones have been taken as unpublished rates and which not?—A. The reference notes on the second page would cover those questions.

Q. You added 8 cents a hundred here.—A. Where the less than carload rate appears, based on Burlington, I have added a half cent a gallon, or 8 cents a hundred, as the marketing cost.

Q. And you have not added anything to Mr. Westgate's figures?—A. No, sir.

Mr. ROSENTHAL. Why should you? Westgate's shipments were all carload shipments, which went right straight through, and there was no bulk broken.

(Paper marked Defendants' Exhibit 178, pages 1 to 5, inclusive.)

By Mr. ROSENTHAL:

Q. I show you defendants' Exhibit 178. Will you explain in detail just what that is?—A. It is a list of shipments by the American Oil Works from Titusville, Pennsylvania, as shown by freight bills produced by Mr. T. B. Westgate, for which there was an undercharge. The first division of this exhibit is headed "Points on Rutland Railroad."

Q. Exhibit 178, then, is an exhibit which shows shipments made by Mr. Westgate, as testified to by him; and instead of showing the discriminations that he testified to you have shown here by the figures printed in red ink that as a matter of fact he was undercharged in almost every instance instead of paying the full tariff rates. Is that right?—A. That is correct. In a number of instances later on it appears that he was overcharged——

10054 Q. And those you show, as well as the undercharge?—A. That he was overcharged on the basis of regularly established tariffs.

Q. Now, Mr. Felton, I call your attention particularly to page 4 of Exhibit 178, and for the purpose of explaining the exhibit I want to direct your attention to the first shipment. Date of the shipment, November 6th, 1902; destination, East Highgate, Vermont. That is, that is the destination of the shipment actually made by Mr. Westgate, as shown by the evidence which he offered. That is what that means, does it not?—A. It does.

Q. And the next column shows the rate which he actually paid, as testified to by him, to-wit 40½ cents?—A. That is correct.

Q. And in the next column you show the correct rate which he should have paid via the route that his shipment actually moved, as being 39½ cents, do you?—A. I do.

Q. That is to say, in connection with that shipment the rate via the route that the freight moved was 40½ cents, the rate paid was 40½ cents; the rate which Mr. Westgate should have paid, or should have been charged by the railroad companies was 39½ cents? That is correct, is it not, as shown by this exhibit?—A. That is true.

Q. Now, in the next column, under the head of "Rate Available" as shown by the figures printed in red ink, appears 31½. Does that mean that on freight which moved from Titusville, Pennsylvania, where the American Oil Works were located, to East Highgate, Vermont, there was a published rate available via a different

10055 route than that actually used by Westgate in making that shipment, of 31½ cents?—A. There was a combination of published rates available at that time of 31½ cents.

Q. Between Titusville and East Highgate, Vermont?—A. From Titusville to East Highgate.

Q. So that instead of paying 40½ cents, which he actually did pay in shipping over the route which he did, as a matter of fact he should have paid but 39½ cents; and instead of shipping over the route which he actually did, and thereby paying 39½ cents, he might have shipped over another available route, under which he would have been compelled to pay but 31½ cents?—A. That is correct.

Q. And you show then in the next column the rate which he could have availed himself of, and in the last column the tariff authorities, do you?—A. The tariff authority for the rate via the available route.

Q. And you pursue that same scheme all the way through this exhibit on that page, and on the 4th and 5th pages.—A. Yes, sir.

Q. In your 30 odd years of experience as a freight traffic man, have you observed that in connection with divers shippers it frequently happens and has happened that they pay higher rates via the route by which they ship than they might have paid via other routes between the same points, that were at the same time available to them?

Mr. KELLOGG. That is objected to as immaterial.

A. It sometimes happens.

Q. Pages 1, 2, and 3 of defendants' Exhibit 178 differ from pages 4 and 5 in so far as the scheme of preparation is con-
10056 cerned and the subject-matter covered, how?—A. The whole work of checking the Westgate testimony was carried out on one general scheme of ascertaining his authority for the rates used; but as the work went on, finding in some cases undercharges and in some cases overcharges, it brought about some subdivisions. Therefore the information set out on page No. 1 is on a somewhat different basis than on page No. 4.

Q. Than pages Nos. 1, 2, and 3.—A. Yes, sir.

Q. As illustrating either the carelessness or inefficiency of railroad employes in making their tariff charges, I call your attention particularly to the shipment under date of August 16, 1902, made by Mr. Westgate, found on page 2 of Exhibit 178 and to the tariff I. C. C. 374 there referred to. Is there any special note in that tariff that you wish to call attention to in that connection? (Handing paper to witness.)—A. I find on page 15 of the tariff referred to in regard to the shipment you have mentioned, namely, Joint Freight Tariff I. C. C. 374, issued by the Dunkirk, Allegheny Valley & Pittsburg Railroad, effective March 27, 1902 (allow me to say right here that the shipment was made August 16, 1902), the following under the heading "Special Notice" (I am reading now from the tariff): "Particular attention is called to the fact that many stations are reached by more than one route, and in some instances the rates differ. In such cases request shippers to designate route they desire shipments to be forwarded by. If they decline to do so, agent must be careful to forward it via a route that will give as low rates as any named, so as to avoid claim for overcharge."

10057 Q. Now, had Mr. Westgate himself been an efficient freight man, he being in charge of their freight traffic, a thing of that kind could hardly have occurred, could it?—A. I do not understand how he possibly could have accepted a bill for a charge of 40½ cents per 100 pounds on this shipment. The tariff is a tariff naming rates on oil from Titusville, and it very simply sets forth the information showing how a 35½-cent rate was obtainable.

Q. As illustrative of the items shown on defendants' Exhibit 178, I wish you would explain in detail just what you did in connection with that first shipment, namely, Altona, New York.—A. I noticed from Mr. Westgate's testimony a shipment from Titusville to Altona, New York.

Q. That is near Rouse' Point, is it not?—A. Yes, sir.

Mr. MILLER. Is that on the Rutland Railroad?

A. So shown in this exhibit. I noticed that the shipment to Altona, made on November 11, 1902, was made via the Red Line, that route appearing on the bill of lading which Mr. Westgate presented, said bill of lading showing a through rate of 33 cents per 100 pounds, Red Line. I thereupon consulted the Red Line book, it being Book No. 41, the book in effect previous to the one introduced here by the Government. I found that Altona was on the road known as the Ogdensburg & Lake Champlain at the time the book was issued, and I found in the special references in the book a notation to the effect that Boston rates would not apply on oil to points on that road. I therefore was obliged to dismiss the Red Line application of Boston rates to that point. I then made inquiry as
10058 to what the proper rate should be to apply, and I found that there was a 26½-cent rate from Titusville, Pennsylvania, to Norwood, and a 22-cent rate from Norwood to Altona, making a through combination of 48½ cents per 100 pounds. I therefore felt justified in setting down the word "Undercharge" the figures 15½, showing so far as my investigations went (and we made careful search along those lines) that Mr. Westgate, with evidently no intention of doing anything wrong, had paid 15½ cents per 100 pounds less than the legal rate from Titusville to Altona on that shipment.

Q. And that is illustrative of the other items that appear on pages 1, 2, and 3 of this exhibit?—A. They were all worked out on that same general theory.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 178.

Mr. KELLOGG. Now, take that Altona rate. Do you know that there was no tariff on file anywhere for a rate of 33 cents from Titusville to Altona?—A. We searched, and we asked the D. A. V. & P. officers if they had anything that we did not have, and the information contained in this exhibit, Mr. Kellogg, is all that we could find.

Mr. KELLOGG. Did you examine the files of the Interstate Commerce Commission?

WITNESS. I did not, sir.

Q. You know that the Red Line, the route via which the shipment moved, showed the correct rate to be 48½ cents instead of 33?—A. Yes, sir.

Q. Now, you have illustrated the overcharge under date of August 16, 1902, on page 2 of the exhibit, have you not?—A. Yes, sir.

10059 By Mr. MILLER:

Q. Mr. Felton, I would like to return to the subject-matter of the division sheets under the tariffs of the Chicago & Eastern Illinois Railroad in connection with the Illinois Central, showing a 13-cent rate from Dolton to Grand Junction, about which you testified yesterday, or before to-day, and with respect to which a division sheet under one of those tariffs was shown to you. Have you caused to be furnished by the Chicago & Eastern Illinois Railroad a

copy of the division sheet under the tariff G. F. D. 10084, being one of the tariffs showing the 13-cent rate about which you have testified? (Handing paper to witness.) (I will say to counsel that this was furnished by the Chicago & Eastern Illinois Railroad.)—A. I have such a division sheet before me.

(The same was marked Defendants' Exhibit 179, and offered in evidence by Mr. Miller.)

Q. It contains the division of the rate, and shows the rate, and shows the waybilling instructions over the Eastern Illinois road, does it not?—A. Yes, sir.

Q. Read the notation thereon containing the instructions as to waybilling. This is a division sheet of the Eastern Illinois, is it?—A. This is a division sheet issued by the Chicago & Eastern Illinois Railroad, defendants' Exhibit 179, and it states that it is a division sheet to be used in connection with G. F. D. No. 10084, joint tariff on oil, carload, from Dolton, Illinois, to Grand Junction, Tennessee. It reads that shipments of oil from Whiting, Indiana, covered by above described tariff, will be waybilled to Evansville at 47.9 per
10060 cent of the through rate, first deducting $3 per car, C. & C. T. switching, and one-half cent per 100 pounds Illinois Central transfer at Evansville.

Q. Then, what does it contain, after that?—A. The division sheet then contains, I take it, so there may be no mistake as to how the work should be done, there being two arbitrary deductions in the application of the rate, an example, worked out in detail, on basis of a carload of oil weighing 40,000 pounds.

Q. Showing the division of the rate?—A. It shows the division of the charges based on the division of the rate, and shows the number of dollars on which a carload of oil weighing 40,000 pounds should be waybilled to Evansville, namely, $25.51.

Q. And shows the rate of 13 cents through to Grand Junction?—A. It shows the rate through to Grand Junction, 13 cents.

Q. And the total freight charge based on that rate?—A. Yes, sir.

Q. On that illustrative part?—A. It then contains, further down in the sheet, the following information: "To Evansville 47.9 per cent, south 52.1 per cent," provision having been made for the deduction of the arbitrary charges for switching from Whiting to Dolton and the Illinois central transfer at Evansville, which covers the cost of crossing the Ohio River by bridge from Evansville to Henderson.

Q. What is the date of that division sheet, on its face?—A. It was issued September 10, 1897.

Mr. KELLOGG. This is objected to as immaterial.

10061 By Mr. KELLOGG:

Q. This is exactly similar to the division sheet of February 8, 1908, which you introduced the other day?—A. I do not recall the date, Mr. Kellogg, but it seems to be exactly the same as the one that I testified to, in regard to tariff 10445.

Q. This division sheet was made soon after the 13-cent rate was put in by the C. & E. I., was it not?—A. I understand the first C. & E. I. tariff to Grand Junction was in September, 1897.

Q. Prior to that the C. & E. I. road had no such tariff?—A. I understand that the tariff issued by the C. & E. I. road in September, 1897, was the first tariff that they issued naming 13 cents from Whiting to Grand Junction.

Q. From September 1, 1897, to March 1, 1898, do you know whether there were any shipments of oil from Whiting, Indiana, under that tariff at all?—A. I have not investigated along those lines.

By Mr. MILLER:

Q. I desire to call your attention to the subject-matter covered by the petition of the Government as to prorating on oil into the southwest territory, and to the charge of the petition that the principal competitors of the Standard Oil Company in Ohio and Pennsylvania were charged proportionately higher rates to reach East St. Louis and thereby points west and south, although it is the custom of railroads to make rates less per ton per mile for long distances than for shorter hauls, and that rates per ton per mile from Whiting and from Rochester, New York, which were Standard shipping points,
10062 were only a little over half the rates from competitive points, and that in the territory west of Chicago and the southwest the Standard for this reason monopolized commerce on petroleum products, and a table by Mr. Schindler was introduced showing the rate per ton per mile from Pittsburg and Ohio competitive points and from Chicago. I think you have already testified to a comparative or relative basis of rates from Chicago to East St. Louis as compared with Central Freight Association or Trunk Line territory, have you not? If not, you may.—A. I have presented a number of exhibits bearing on those subjects.

Q. What was the fact with respect to this matter of the rate per ton per mile from Chicago as compared with eastern shipping points?—A. We have a table on that; I do not recall whether it has been put in or not.

Q. I think you have already testified that a lower basis of rates existed as between Chicago and East St. Louis than as between cities of the same distance in other portions of the eastern territory, have you not?—A. I testified that the basis of rates between Chicago and East St. Louis was a very low basis.

Q. And was that true with respect merely to petroleum and its products, or to a very large number of commodities generally?—A. That was true of a large number of commodities, and I think we have an exhibit in evidence covering that.

Mr. KELLOGG. You went over that whole subject the other day.

(Paper marked Defendants' Exhibit 180.)

Q. If through rates had been made from these points in Ohio and Pennsylvania into the southwest territory, what would
10063 you say as to the basis of those rates, how made up, and have you a table showing them? Have you had prepared a table

showing the oil rates based on the combination of locals on East St. Louis and through rates as they would be based upon existing differentials?—A. Defendants' Exhibit 180 is headed: "Oil rates in cents per 100 pounds, based on combination of locals and East St. Louis, and through rates based on 5th class differential, showing rates from East St. Louis, Whiting, Toledo, Cleveland, and Pittsburg to Texas common points."

Q. In other words, this is a comparison of the result of the oil rates based on the combination of the locals and a through rate based on the 5th class differential?—A. Yes, sir.

Mr. MILLER. We offer defendants' Exhibit 180 in evidence.

Q. In making this comparison, you have used the differential on what class?—A. The statement shows "Through rate based on 5th class differential."

Q. Why do you use that class?—A. That is the proper differential to apply based on the tariff which names the basing rate of 55 cents from East St. Louis to Texas common points.

Q. What tariff do you refer to, can you state?—A. The reference is given on the statement.

Q. And specifically what portion of that tariff, do you remember?—A. I could not say without consulting it, Mr. Miller.

Mr. MILLER. We refer the counsel to note on page 31 of that Southwestern tariff 1 V, I. C. C. 351, which specifies the 5th class differential as the proper one to be applied.

Q. The Standard Oil Company had nothing to do with the establishment of the differential shown by that tariff, had it?—A. No, sir.

10064 Mr. KELLOGG. Just one word here. Referring to defendants' Exhibit 180, in the first column are the actual oil rates, are they?

WITNESS. The combination of locals; yes, sir.

Mr. KELLOGG. In the second column, you do not mean to be understood as saying they were the oil rates?

WITNESS. No, sir. What they would have been on 5th class.

Mr. MILLER. On through rates based on 5th class.

Q. Have you prepared a table showing the class differentials that Chicago, Toledo, Cleveland, and Pittsburg, respectively, take over East St. Louis, and the rate per ton per mile over such differentials?—A. Such a table has been prepared.

Q. Is defendants' Exhibit 181 that table?—A. Yes, sir.

Mr. MILLER. We offer defendants' Exhibit 181 in evidence.

By Mr. KELLOGG:

Q. That means differentials applicable on Texas shipments, does it?—A. The exhibit should contain that notation; yes, sir.

Q. On its face it does not show?—A. No.

Q. I think you ought to add to it that this is on Texas shipments, ought you not?—A. Applicable on traffic for Texas common points.

Q. Just put that in the heading, will you?

Mr. MILLER. That is, if applied on oil.

Mr. KELLOGG. No; that is not right. I do not think I made myself clear, Mr. Miller. This is not the differential between Chicago and St. Louis; this is the differential on traffic destined to Texas common points.

WITNESS. That is true.

Mr. KELLOGG. That is as I understand it, and there is no
10065 question of oil in it at all. It is on other classes.

WITNESS. These differentials did not apply on oil. This table is prepared for the purpose of showing what the basis of rates would have been from those points had the differential applied on the basic rate from East St. Louis to Texas common points.

By Mr. MILLER:

Q. Upon this exhibit of the comparative rate per ton per mile, have you caused to be prepared a table showing the rates on commodities other than oil from Pittsburg and from Chicago?—A. I have; yes, sir.

(Paper marked "Defendants' Exhibit 182.")

Q. What is that table?—A. Defendants' Exhibit 182 is a comparative table of rates from Pittsburg and from Chicago to destinations shown that are less per ton per mile for the shorter than for the longer haul.

Q. The purpose of that table is to show, is it not, that it is not anything like an unexceptional rule that the rate per ton per mile is greater for a shorter than for a longer haul?—A. This table is prepared for the purpose of showing that there are instances where the rate per ton per mile for the longer haul is greater than the rate per ton per mile for the shorter haul on the same class of traffic.

Q. And in a note at the bottom, under "Authorities," with references to the different commodities by letters, is given the tariffs that show the rates that are put into this statement?—A. The tariff authorities and distances.

Q. And in the schedule is given the rate per ton per mile both for the longer haul and for the shorter haul?—A. Yes, sir.

10066 Q. As well as the rate itself per 100 pounds?—A. Yes, sir.

Mr. MILLER. I offer defendants' Exhibit 182 in evidence.

By Mr. KELLOGG:

Q. Referring to defendants' Exhibit 182, you have taken various articles and the rates from Chicago to East St. Louis and the rates from Pittsburg to East St. Louis and the rate per ton per mile on each, haven't you?—A. Yes, sir.

Q. Now, to make a fair comparison, you should take articles which are shipped from both places, shouldn't you?—A. These articles may be shipped, so far as I know.

Q. Wait a moment. To make a fair comparison, you should take articles of which there is a considerable amount shipped?—A. These articles may be shipped, so far as I know.

Q. Now, one moment, Mr. Felton. You know that if a tariff is a tariff that is never used, it may be absurdly high; isn't that true in many places throughout the country?—A. Without getting into an argument, I think that has been shown against us many times, that we should have used tariffs that are absurdly high and tariffs that were never intended for the class of commodities for which they are named.

Mr. MARTYN. Tariff 24 of the Chicago & St. Louis Freight Association, between Chicago and St. Louis, would be an illustration of that.

Q. Where no freight shipments have been offered the companies the rates are very high, aren't they, because the tariffs are merely nominal tariffs?—A. That is true.

Q. Now take these articles. Take lumber. You say you have had thirty years' experience as a traffic manager. Don't you
10067 know that no lumber is shipped from Pittsburg to East St. Louis?—A. Oh, no.

Q. And has not been in twenty years?—A. Oh, no; I could not say that.

Q. Well, practically none?—A. Without getting into an argument—because I am not going to, Mr. Kellogg—suppose one car of lumber was shipped——

Q. What would one car of lumber be shipped from Pittsburg for?—A. Such a thing might happen.

Q. It is a bare possibility.—A. A carload of starch might be shipped.

Q. Now, none of the articles which you have named here for shipment between Pittsburg and St. Louis in an article commonly shipped from that place?—A. I could not say, sir.

Q. Now, let us see whether you can. Is there any asphalt produced in Pittsburg?—A. I do not know.

Q. Did you ever hear of such a thing?—A. I never investigated along that line at all. In preparing these tables I have not investigated, as I have stated a number of times, the movement of traffic.

Q. You have just picked out some rates that were high from Pittsburg and low from Chicago?—A. No, sir; pardon me, I have done nothing of the kind.

Q. Well, why didn't you take iron and steel from Pittsburg to East St. Louis? Tell me that.

Mr. ROSENTHAL. Simply because he did not, that is all.

A. Why, I could not say without looking up my data on which this statement was made up.

10068 Mr. MILLER. There is iron and steel to Milwaukee.

Mr. KELLOGG. Yes, certainly; because there is water competition between Chicago and Milwaukee, that is the reason it was taken. That is perfectly evident.

Q. Why didn't you take iron and steel from Pittsburg?—A. I say I could not answer that without having the data on which this was compiled.

Q. Did you give directions for the compilation of this statement?—A. The Government put in some evidence to show comparison of rates with oil between Pittsburg and East St. Louis and Chicago and East St. Louis; so I set a clerk to work, taking these commodities from Chicago to East St. Louis, and told him to see what the rates were from Pittsburg to the same points and make the comparison.

Q. Now, why did you take these commodities?—A. I simply picked them out haphazard, perhaps, from the list.

Q. Pittsburg is the largest steel and iron producing center in the world, isn't it?—A. Yes, sir.

Q. And Chicago is a large iron and steel producing center, isn't it?—A. The outlying districts; yes, sir.

Q. And East St. Louis is a large market, isn't it? There is a large market there?—A. Yes, sir.

Q. Now, you have taken iron and steel from Pittsburg to Milwaukee and from Chicago to Milwaukee. Why didn't you take it to East St. Louis?—A. I will have to look over the data on which this statement was compiled before I can answer you.

Mr. MILLER. This was compiled to show the exception.

Mr. KELLOGG. Certainly, the exception.

Q. Is Pittsburg competitive with Chicago on a single one
10069 of those articles that you have named there?—A. I do not know.

Mr. MILLER. Nor is iron and steel.

Mr. KELLOGG. Well, you haven't taken out schedules on iron and steel.

Mr. MILLER. No; but we have taken the Milwaukee rate, where they are competitive.

Q. Now, isn't the rate from Chicago to Milwaukee controlled by the water competition from Chicago to Milwaukee?—A. I could not say on what basis that 2½-cent rate was made.

Q. Do you pretend to say that you have been a traffic man in and about Chicago for thirty years and do not know that?—A. I would not undertake to say the basis on which any tariff was constructed.

Q. You have been talking about it for a week or two.—A. I talked about tariffs that I had something to do with.

Q. Very well. You have talked about a great many that you didn't have to do with, haven't you?—A. I do not recall without——

Q. And practically all over the country, in making rates?

Mr. MILLER. I object to this.

WITNESS. Whatever I testified to is shown by the record.

Mr. MILLER. I think we will stop this, Mr. Felton.

Mr. KELLOGG. I object to the document (defendants' Exhibit 182) as immaterial.

By Mr. MILLER:

Q. Mr. Felton, I think you have testified that the rate per
10070 ton per mile might be affected by the length of a competitive line between two points. Is that illustrated by the exhibit

which the Government has printed at page 129 upon this comparison of the rate per ton per mile of the different cities as between the Alton and the Eastern Illinois and the Burlington from Whiting to East St. Louis? What is the difference there between the rate per ton per mile over those different roads?—A. The Chicago & Alton, for a distance of 281 miles, shows a rate of 4.3 mills; the same rate per ton per mile is shown over the Chicago & Eastern Illinois for 288 miles, while over the Chicago, Burlington & Quincy, for 345 miles, is shown a rate of 3½ mills per ton per mile.

Before we adjourn, may I explain in answer to your question, Mr. Kellogg? Consulting with Mr. Martyn, who helped me compare some of these statements, he reminds me that we purposely omitted the iron rate from Pittsburg to East St. Louis for the reason that the rate per ton per mile on iron to East St. Louis was less, and in making this table it was our object to put into the table such instances as we found from Pittsburg which showed the rate per ton per mile was more. I would have answered that before if it had occurred to me. I remember, now, distinctly why we left it out.

(A recess was here taken until 2 o'clock p. m., at which time the examination was resumed.)

By Mr. MILLER:

Q. Referring to defendants' Exhibit 182, which was offered in evidence, it shows, does it not, in the list of articles and
10071 destination, "Articles of iron and steel manufacture, Milwaukee?"—A. It does.

Q. But it did not contain any statement with respect to the rate per ton per mile on shipments of articles of iron and steel manufacture from Pittsburg to East St. Louis?—A. The document offered as defendants' Exhibit 182 this morning did not.

Q. You were asked about that by Mr. Kellogg?—A. Yes, sir.

Q. Are you now prepared to add to that exhibit the same data, under the same headings, with respect to the rates from Pittsburg to East St. Louis?—A. Yes, sir.

Q. And from Chicago to East St. Louis?—A. Yes, sir.

Q. The same data with respect to East St. Louis as is here shown with respect to Milwaukee?—A. Yes, sir.

Q. That is shown at the bottom of the list.

Mr. MILLER. With the consent of counsel for the Government, I would like to present a new exhibit, 182, containing this information, together with a statement of what commodities or what articles of iron and steel manufacture were included in the Chicago-East St. Louis tariff, and also the additional authority, and ask that this be substituted in place of defendants' Exhibit 182 and as defendants' Exhibit 182.

Mr. KELLOGG. Let me ask a question about this.

By Mr. KELLOGG:

Q. The rate from Pittsburg to East St. Louis of 20½ cents is what kind of a rate—commodity rate or class rate?—A. It is a commodity

rate; that is, it is a rate specifically established to provide for
10072 a lot of articles known as articles of iron and steel manufacture.

Q. It is in the class tariff, isn't it?—A. I don't know whether that was taken from a class tariff or whether it was taken from a commodity tariff, but it is the rate specifically established for moving the iron business from Pittsburg to East St. Louis.

Q. Now, the question is, is it the only rate that applies on the articles named at the bottom of the page, or are there commodity tariffs besides?—A. No, sir; that is the rate and, as I understand it, the lowest rate.

Q. Now, what is the tariff?—A. It is referred to there.

Mr. MILLER. It is referred to in the note there, Mr. Kellogg.

Q. Have you got it here with you?

Mr. MARTYN. No.

Mr. DURAND. We can't tell which one it is.

WITNESS. Mr. Kellogg, that is the rate applying on articles of iron and steel manufacture; whether it is in the form of a commodity tariff (if I may be permitted to explain), or however it may be issued, it is issued specifically and has all the effect of a commodity rate, as it is issued specifically to apply on articles of iron and steel.

Q. That is true. Now, what is the tariff you have taken from Chicago?—A. The tariff of the so-called Chicago and St. Louis Traffic Association.

Q. That is a commodity rate?—A. That is a commodity rate also.

Q. Pure and simple.

10073 Mr. MILLER. The tariff is largely a class tariff, is it not? That is the tariff that is in evidence, isn't it, Mr. Durand?

Mr. DURAND. It has been described and part of it is in evidence; yes.

Mr. MILLER. Well, for the most part it is a class tariff.

Mr. KELLOGG. But the 8-cent rate you name is a commodity rate?

WITNESS. Yes, sir.

Mr. KELLOGG. There is no objection to putting it in. Just one other question. These other tariffs from Pittsburg on asphalt, brick, beans, starch, and such stuff as that, are class rates, aren't they?

WITNESS. Yes, sir.

Mr. KELLOGG. And the rates from Chicago are commodity rates?

WITNESS. Yes, sir.

Mr. KELLOGG. So you compare commodity rates with class rates?

WITNESS. The existing rates on which the business is moved.

Mr. KELLOGG. Now, you take railroad iron. There is a regular commodity tariff on steel rails, isn't there, from Pittsburg to East St. Louis?

WITNESS. I do not know whether there is any different rate specifically applying on steel rails; that is, whether there is a rate different from the rate I have used in this table. May I have that exhibit for a moment?

(Paper handed to the witness.)

WITNESS. You made one or two inquiries of me this morn-
10074 ing, Mr. Kellogg, which I would like to answer, if you please.

You asked me if the rate from Chicago to Milwaukee was not made on account of water competition. I have made inquiries, and I find that that rate was not only made on account of water competition, but in conference with the boat lines. You also asked me if any of the articles named, on which I have shown rates from Pittsburg, are really shipped from Pittsburg. I have caused inquiry to be made along that line, and am told that asphalt, building brick, earth paint, beans, and vinegar are shipped from Pittsburg at or on the basis of the rates I have named; and my attention has been called to the fact that considerable shipments of vinegar are made out of there on this basis of rates by the Heinz Pickling Company, in tank cars. Therefore, it seems right to compare the vinegar rate, as shown from Pittsburg to East St. Louis, as against the vinegar rate shown from Chicago to East St. Louis.

Mr. KELLOGG. Although the vinegar rate from Pittsburg is a class rate and the other is a commodity rate?

WITNESS. It is the rate on which the traffic moves.

Mr. KELLOGG. Now, take building brick. No considerable quantity of building brick goes from Pittsburg?

WITNESS. I can only reply to you by stating what I was told, that shipments were made.

Mr. KELLOGG. Yes; shipments could be made—isolated carloads.

By Mr. MILLER:

Q. Do you know where the inquiry was made, from what source?—
A. It was made at the offices of the Pennsylvania Railroad
10075 in Chicago.

Q. That is the line whose tariff names the rate?—A. Yes, sir.

Q. Mr. Felton, I would like to recur for a moment to the subject that is called here the Grand Junction combination, and ask you whether or not upon the cancel'ation of the 13-cent tariff to Grand Junction, which, I believe, was about December, 1905, was it not?—A. December 11, 1905, as I recall the date.

Q. In the conduct of the business of the Standard to the points that were served through the Grand Junction and Evansville gateways, what was the effect of that or what was the course of business after that with respect to the conduct of the business?—A. I have made inquiries and have been informed that——

Mr. KELLOGG. I object to "inquiries" and "being informed." There must be some limit to this. Let the man who knows what the traffic was and how much there was of it testify to it.

WITNESS. I obtained this information from Mr. Bogardus, of the Standard Oil Company.

Mr. KELLOGG. Then let Mr. Bogardus testify to it.

Q. You may go on.

Mr. KELLOGG. It is objected to as hearsay.

A. My inquiries related only to the balance of the month of December, 1905, following the date of the 11th, so as to fill out the information on an exhibit which I have put in here showing the movement of traffic through the Grand Junction and Evansville gateways for the year 1905; and I am informed that there was no dim-
10076 inution of the traffic for the balance of that month, it moving, as previously, through Evansville and through Grand Junction, except that after the 13-cent rate was canceled from Whiting to Grand Junction the traffic moved on the Evansville combination.

Q. Now, recurring to the subject of comparative rates or similarity of rates from Wellsville, New York, and from Olean, New York, about which you have given some testimony, but I think as to which you did not give your tariff authority; at any rate you now produce tariffs bearing upon that question, showing the facts with respect to it?—A. I have before me two tariffs issued by the Erie Railroad, one from Olean, New York, I. C. C. 3604, and the other from Wellsville, New York, I. C. C. 3603, both effective June 22, 1903, that seem to have been printed from the same type, except using words showing the rates, one from Olean, and the other from Wellsville.

Q. Is the Erie road the only road that serves both those places?—A. No, sir; the Buffalo & Susquehanna Railroad reaches Wellsville (I think their station name is also Stannard's), and the Pennsylvania Railroad reaches Olean.

Q. But I mean is there any other one road than the Erie that reaches both towns?—A. No, sir.

Q. The Erie is the only single road?—A. That reaches both towns; yes, sir.

Q. Did you give the rates from Wellsville and from Olean as named in that tariff? If not, will you please read so much of the tariff as names the rate from Wellsville and from Olean,
10077 respectively, so as to make the comparison? Or you may state it generally, if there is no objection.—A. I have stated that the tariffs seem to have been printed from the same type so far as the description of stations and the application of rates is concerned.

Q. And the rates themselves?—A. Yes, sir.

Q. Generally, what territory do those tariffs apply to?—A. I am reading from the Wellsville tariff, I. C. C. 3603, which names rates to Constable Hook, Communipaw, Jersey City, and intermediate points, Albany, Troy, Cohoes, Schenectady, and points in that location; provides for rates to Albany rate points, Boston rate points, New York rate points, Philadelphia rate points, Baltimore and Baltimore rate points—a very large territory generally.

Q. Is that true of the other tariff, too?—A. Yes, sir.

Q. The same provision?—A. Yes, sir.

Q. In other words, the tariffs are the same?—A. They are apparently printed from the same type, and issued the same date.

Mr. MARTYN. The same date, within one day?

WITNESS. Yes; within one day.

By Mr. KELLOGG:

Q. Now, those tariffs name rates from Olean and Wellsville, respectively, to points east on the Erie Railroad, do they not?—A. Yes. There may be a few points west. It is an east-bound tariff.

Q. Olean is on the same line of road as Wellsville—the Erie road?—A. Yes, sir.

Q. And Olean is west of Wellsville?—A. Yes, sir.

Q. So that the rate from Wellsville to points east would have to be no greater than the rates from Olean?—A. That is true.

Q. That is all there is of that, isn't it? (No answer.)

10078 By Mr. MILLER:

Q. Now, you have put these in just as samples of tariffs, have you not?—A. Yes, sir.

Q. To illustrate what you have stated before?—A. Yes, sir.

Q. What is the fact as to whether Olean and Wellsville, with a single exception, are placed upon the same basis, both as to east and west bound rates?

Mr. KELLOGG. Wait a minute. Where is your tariff? That is objected to.

Mr. MARTYN. We will get them for you if you want them.

A. I could not answer that question specifically without referring to the tariffs, Mr. Miller.

Q. Referring, Mr. Felton, to the subject of prorating, or the cessation of prorating between Chicago and points east of Chicago and the Pacific coast, testified about by Mr. Boltz, did the Standard Oil Company, to your knowledge or information, so far as you have any information, have anything to do with bringing about that change that took place by which rates from points east of Chicago, Toledo, Cleveland, and Pittsburg were raised to 90½ cents from 78½, as testified to by Mr. Boltz?

Mr. KELLOGG. That is, if you know. You were not with the Standard Oil Company, as I understand, at that time.

A. I have made inquiries, and I am unable to learn that anyone had anything to do with it.

Mr. KELLOGG. That is objected to as incompetent.

Q. You made inquiries for that purpose?

Mr. KELLOGG. That is purely hearsay.

10079 A. Yes, sir; for that purpose.

Q. Now, the change that was testified to by Mr. Boltz as having been brought around as a compromise of the contention and petition filed by him before the Interstate Commerce Commission, by which in 1907 the transcontinental roads raised the oil rates from Chicago to the Pacific coast terminals from 78½ cents to 90 cents, canceling the $105 tank car return charge, how far or over what stretch of territory, if you know, by that so-called compromise of Mr. Boltz, did the 90-cent Chicago-Pacific coast rate apply?—A. The advance made at that time, as I recall (I could state more specifically by having the

tariffs), advanced the rate not only from Chicago but from the Mississippi and Missouri rivers, the Kansas and Oklahoma and Texas fields, to the same basis.

Mr. KELLOGG. I would like to see that tariff for that. That is objected to.

Q. Do you know whether that appears in the current transcontinental tariff?—A. I understand that rate appears in the current transcontinental tariff. I think you have a supplement that covers that.

Mr. MARTYN. I haven't it here.

WITNESS. I will say that I testify after perusing one of those tariffs.

Q. So that, with that rate in force, all of these points and territories and districts that you have named paid the same rate as Chicago and points east of Chicago to the Atlantic coast?—A. The tariffs so indicate; yes, sir.

10080 Q. Now, with regard to the charge of $105 for the return of the car, which as the result of Mr. Boltz' work, according to his testimony, was canceled in the raise of rates, what was the fact about the length of the existence of that charge, and how long had that been?—A. My memory goes back now to the statement I made to Mr. Garfield (I have made no inquiries on that subject since that time), and that is that when the Standard Oil Company commenced to do business as the Standard Oil Company on the Pacific coast that rule was found to be in force. May I see that tariff, Mr. Durand? That is right, isn't it?

Mr. DURAND. I should judge so.

(Tariff handed to witness.)

WITNESS. I am reading now from Transcontinental Freight Bureau West-bound Special Tariff No. S. R.-953, I. C. C. No. 845. On page 3 of that tariff I find that to Pacific coast terminals only the rates on oil (without specifically reading a mass of stuff that is on this page) were 90 cents per 100 pounds, from New York, Boston and common points, Pittsburg, Buffalo and common points, Cincinnati, Detroit and common points, Chicago and common points, Mississippi River common points, Missouri River common points, Beaumont, Texas, via Santa Fe system or K. C. S. Railway, Chaison and Port Arthur, Texas, via K. C. S. Railway, via Kansas City, Missouri, which confirms my earlier statement that when the rate was advanced to 90 cents it was applied from all those western fields.

Q. And as a result of that tariff the oil shipped from all these fields west of Pittsburg and Ohio—at least which the California consumer got—cost him 11½ cents more than previously?—A. Yes, sir.

10081 Q. That was about the net result of the business?—A. That was practically the net result of the advance in the rate.

Mr. KELLOGG. You said Mississippi River common points, did you?

WITNESS. I read from the tariff, Mr. Kellogg.

Q. Have you had prepared under your direction a statement of the carloads of oil shipped by the Standard Oil Company from eastern refining points during a course of years?—A. Yes, sir.

Q. Have you the statement with you?—A. Yes, sir.

Q. What is defendants' Exhibit 183? Is it the statement you refer to?—A. It is.

Q. What is it?—A. A statement of carload shipments from Eastern refining points to the Pacific coast.

Q. And what years does it cover?—A. 1902, 3, 4, and 5, with the total.

Q. And it shows shipments from Pittsburg and Franklin and from Whiting, does it?—A. Yes, sir.

Q. Now, the shipments shown from Whiting consist of what?—A. Following Whiting is a reference letter a, and there is a note at the bottom of the exhibit which reads, following a: "Shipments shown from Whiting consisted of oil produced by the Pennsylvania refineries and shipped to Whiting and there unloaded, in order to have the goods nearer the market at certain seasons, and then reshipped, such shipments paying the sum of the locals from Pennsylvania point of shipment to Whiting and from Whiting to the Pacific coast.

Q. Then, is it a fact that the whole 1,520 carloads that are
10082 shown upon this exhibit were carloads of oil that came from the Pennsylvania refineries?—A. That is true.

Q. And were shipped by the Standard Oil Company to Pacific coast terminals before this change in the rate that was brought about by Mr. Boltz, as he testified?—A. Yes, sir.

Q. And while the conditions existed of which he complained?—A. Yes, sir.

Mr. MILLER. I offer in evidence defendants' Exhibit 183.

By Mr. KELLOGG:

Q. What was it you said about the purchase of the Pacific Coast Oil Company by the Standard Oil?—A. I did not say that.

Q. About the $105 rate.—A. Perhaps you had better hear my answer read.

Mr. KELLOGG. Will you turn back to that. I did not get that.

The reporter read as follows: "A. My memory goes back now to the statement I made to Mr. Garfield (I have made no inquiries on that subject since that time) and that is that when the Standard Oil Company commenced to do business as the Standard Oil Company on the Pacific coast, that rule was found to be in force."

Q. When was that?—A. I don't know.

Q. What Standard Oil do you mean now? The Standard Oil Company did not commence to do business in California as the Standard Oil Company until last year, did it?—A. I think there was a Standard Oil Company of Iowa doing business there previous to that.

Q. I want to get the date. You mean when the Pacific
10083 Coast Oil Company's name was changed to the Standard Oil of California?—A. Oh, no.

Q. When do you mean?—A. I can only repeat what I said, that I did not ask what particular Standard Oil Company, or——

Q. How could you be making a statement that the $105 rate was found in force when the Standard Oil Company commenced to do business there without knowing when it commenced?—A. That inquiry was made in May or April, 1906, and as I get from your inquiry just now, the Pacific Coast Oil Company was not sold or the name was not changed until what date?

Q. I think it was in 1907.—A. Then, consequently the information that I received in May, 1906, must have referred to some other Standard Oil Company.

Q. Now, coming to this Exhibit 183, this runs back as far as 1902.—A. I took those four years; yes, sir.

Q. Is this the only oil shipped from Whiting to California?—A. No, sir. This statement is only made to present an exhibit showing the number of cars that the defendant companies shipped during these four years from the Pennsylvania oil regions on the sums of the locals via Chicago to the Pacific coast.

Q. But it does not include the other shipments from Whiting?—A. I did not make any reference to the shipments from Whiting proper.

Q. Now, this is all lubricating oil, isn't it, or fancy grades of gasoline, or something of that kind?—A. On the contrary I have made inquiry with respect to this particular exhibit, and I am informed that it was all refined oil.

10084 Q. Well, lubricating oil is refined oil?—A. No, sir; there is no lubricating oil included in these figures, according to the statement received by me.

Q. From whom do you get your information?—A. When I asked for these figures, with a view of making up this statement, I requested that I be not furnished any figures excepting those applying on refined oil, the oil which the Standard refers to, and which I think you may know something about, called Elaine oil, a burning fluid, a kerosene.

Q. Of whom did you get this information?—A. I got that information from the Pittsburg and Franklin shippers.

Q. Who are they?—A. The Eclipse Works, of the Atlantic Refining Company at Franklin, and the Atlantic Refining Company at Pittsburg.

Q. Elaine oil is a high-grade oil, isn't it?—A. Yes, sir.

Q. A very fancy grade?—A. I don't know how fancy, but I know it is a high-grade kerosene.

Q. Since about 1901 the Standard has obtained most of its supply of illuminating oils for the Pacific coast from California, hasn't it?—A. I could not say as to that.

Q. You know it has not been a large shipper of illuminating oil to California since 1901, has it?—A. I know we shipped this number of cars.

Q. Well, that is not a large shipment.

Mr. MILLER. Why, everybody knows, I think, Mr. Kellogg, that the California fields are now producing most of the oil that is there sold.

Mr. KELLOGG. All right. That is all.

10085 By Mr. MILLER:

Q. Mr. Fulton, do you know the fact with respect to the transcontinental railroads ceasing to prorate on other oils? What is the fact about that?—A. I have before me supplement No. 41 to west-bound Tariff No. 1–C, effective June 25, 1898. This supplement shows on page 5 that with respect to a number of oils, namely castor, cocoanut, corn, rubber, cotton seed, rape seed, dead, kalon, lard, linseed, neatsfoot, red, resin, or "G," and tallow oils in cans, boxed, in barrels, or in bulk in tank cars, while there was a rate of 78½ cents from Chicago, Mississippi River, Missouri River, and points common therewith, no through rates appear on this sheet from points east of Chicago, from Chicago points; from which I think I am justified in inferring that on those oils the sums of the locals via Chicago would apply.

Q. Now, when Mr. Schindler, a witness for the Government, was on the witness stand testifying to this Pacific coast prorating, he was asked on cross-examination with respect to certain other commodities than petroleum, on which the transcontinental lines made no rates from points east of Chicago. As I recall, he was asked with respect to flake malt, coke, malt, rags, and empty drums, returned, or some of them. Do you know what the fact is with respect to that, and can you refer to the tariff authority for it?—A. I have prepared a table with the tariff reference.

Q. And have you that table?—A. Yes, sir.

(Paper marked Defendants' Exhibit 184.)

10086 Q. What is defendants' Exhibit 184?—A. It reads that it is a statement of commodities other than oil on which the railroads did not make through rates to Pacific coast terminals, but charged from eastern points the sums of the locals to and from Chicago; and the tariff authority for the statement is Transcontinental Freight Bureau Tariff 1–C, June 28, 1908.

Q. And prior issues?—A. It reads "Also prior and subsequent issues."

Q. And the schedule in the amounts given there, what are they—rates?—A. The amounts shown opposite the names of the articles represent the rates in cents per 100 pounds.

Q. From where?—A. From Chicago.

Q. From Chicago to the Pacific Coast?—A. Yes, sir.

Mr. MILLER. With the exception of some possible tag-ends on Monday morning, to be finished up with Mr. Felton, his direct examination is through, and on Monday forenoon counsel may cross-examine him. Mr. Rosenthal is not here, so I can not be more definite about those few tag-ends, if any.

Mr. MARTYN. Just this, if Mr. Crossland can get the tariffs of Mr. Green for Mr. Felton, Mr. Felton will want to make a somewhat extended discussion of those tariffs.

By Mr. KELLOGG:

Q. Let me ask Mr. Felton a few questions about the Pacific Coast matter. You said that $105 a car for returning the empty car you found in force in California when the Standard Oil Company, as the Standard Oil Company, commenced to do business there?—A. I said this, if you please, Mr. Kellogg, that I made inquiry in
10087 May, 1906, to ascertain something about that charge. I had previously consulted a number of transcontinental tariffs, and as far back as I could go, as I remember, I found that charge on the tariffs; so I said to someone—and that has slipped my mind—"What about this $105 charge? When did it go into effect? What do you know about it?" and the answer was "Why, that charge was in force at the time the Standard Oil Company commenced to do business as the Standard Oil Company on the Pacific Coast." Now, as that was prior to the time that the present organization of the Standard Oil Company went into existence, as I understand from what you have said (and I base that on nothing else) then that must have related to something else, or else it may have been on offhand way of covering a general situation in answering my inquiry.

Q. I think that is quite right. It was in force sometime prior to that. Then, the eastern shipper, the shipper east of Chicago, prior to 1907 when that prorating was resumed, had not only to pay a higher rate than Chicago to the Pacific Coast, but he had to pay $105 a car for getting his empty car back?—A. The shipper at Chicago had to pay that $105 also.

Q. That is if he did not have some other way of using the car?—A. Yes, sir.

Q. Now, as a matter of fact, the Standard Oil Company had cars constructed with what are known as tank bottoms, hadn't they, so they could use the cars for other purposes?—A. The Union Tank Line had some so-called combination box and tank cars.

Q. That is the combination tank and box car of the Standard Oil Company contained a tank in the bed of the car?—A. I under-
10088 stand those tanks are located in each end as a rule, but in the bed of the car, under the roof, in the box car body, yes, sir.

Q. So that you could use the car for loading back with other material?—A. Yes, sir.

Q. How many of those cars did the Union Tank Line Company have?

Mr. MILLER. I object to that.

Mr. KELLOGG. Why?

Mr. MILLER. It is immaterial. Whatever they did anybody could have done.

Q. Well, I just wanted to get at it whether they did, that is all. How many of those cars did they have?—A. Mr. Miller has objected. What shall I do, Mr. Miller?

Mr. KELLOGG. Answer the question.

The EXAMINER. Go on and answer it unless you are instructed not to by your counsel.

WITNESS. He said he objected, and I thought he meant that objection to my answering. I think they have had varying amounts of those cars, running as high as 340, as far as I recall the maximum number.

Q. Those cars were made for the very purpose of loading back, weren't they?—A. As those cars were built and in operation long before I was connected with the Union Tank Line, I could not answer that question specifically.

Q. You have handled those cars, haven't you?—A. I have known that those cars were running.

Q. You are in general charge of the Union Tank Line, aren't you?—A. Yes, sir.

Q. You know what they are for, don't you?—A. Those cars
10089 are to transport oil to the Pacific coast.

Q. Yes, and to transport merchandise or other products back, so as not to have to pay for the empty car back?—A. That is true.

Mr. MILLER. So as not to run back empty.

WITNESS. That is true; yes, sir.

Q. They do not have to pay anything when they come back loaded?

Mr. MILLER. The real object was to come back loaded, was it not, instead of coming back empty?

WITNESS. I was getting to that. The object was to get a load for the return and save the $105.

Q. Very well; that is it exactly.

Mr. MILLER. And also save hauling the empty car from the Pacific coast.

Mr. KELLOGG. I don't suppose you cared whether they hauled an empty car so long as you did not have to pay for it?

WITNESS. That would enter into the general effect, Mr. Miller; yes, sir.

Mr. MILLER. The owner of the car would consider that, wouldn't he?

WITNESS. Yes, sir; in some degree.

Q. Now, when they loaded those cars from the Pacific coast back, you not only did not have to pay the $105, but you got a mileage for the car, didn't you?—A. Yes, sir.

Q. How much a mile?—A. The general mileage throughout the country is three-quarters of a cent.

Q. You got the same for those cars as the others?—A. Yes, sir; I so recall. There may have been a time that there were some
10090 Pacific coast rules there as to a little less mileage, but we got whatever the current mileage was.

Q. There was a time when the Pacific coast roads paid a cent, too?—A. I don't think they ever paid a cent on a tank car or a com-

bination box and tank car. I think there was a little while they paid less than three-quarters of a cent on cars of that character.

Q. Three-quarters of a cent was the ruling price?—A. Yes, sir.

Mr. KELLOGG. Mr. Rosenthal did not want me to go into general cross-examination, so I will not do that this afternoon.

By Mr. MILLER:

Q. Do other oil people beside the Standard have combination cars?—A. Yes, sir; that is shown by the Tank Gauge Handbook.

Mr. KELLOGG. What companies?

Mr. MILLER. The Western Tank Gauge Handbook.—A. They are shown in the Gauge book. I could not say without referring to the book.

Mr. KELLOGG. Do you know of any eastern concern that has got them?

Q. Whatever was done by the Standard in the using of combination cars, and so saving the charge on empties, was availed of or was open to all shippers upon equal terms with the Standard and everybody else, wasn't it?—A. Yes, sir; absolutely.

Q. Was it provided for by the tariff?—A. Yes, sir; fully provided for by the tariff.

By Mr. KELLOGG:

Q. Do you know of any tariff reference that shows that?—A. The tariff reference I am speaking of is the tariff reference
10091 that provides for a charge of $105 for the return of the cylinder car and makes no charge for the return of the combination car.

Q. Does it say anything about it at all?—A. It does not say anything about the combination car.

Q. In other words, the tariff says that there will be $105 for returning the tank car?—A. The cylinder car.

Q. The cylinder tank car?—A. The cylinder tank car is understood by the car owners and the railroads to mean a plain cylinder tank car.

Mr. KELLOGG. But it says nothing about any others?

Mr. MILLER. It could not be loaded with merchandise?

WITNESS. No, sir.

Mr. MILLER. Do some of those cylinder tank cars come back loaded?

WITNESS. Yes, sir.

Mr. MILLER. In that case the car did not pay a charge, but received a mileage?

WITNESS. That is true.

Mr. KELLOGG. Mighty few of them, though.

WITNESS. There was not a very large amount of liquid freight coming east that could be loaded in those cars, but there was some of the time.

(An adjournment was then taken until Monday, October 12, 1908, at 10.30 o'clock a. m.

10092 ROOM 677, FEDERAL BUILDING, CHICAGO, ILL.,
Monday, October 12, 1908, 10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison; on behalf of the defendants, Mr. Moritz Rosenthal, Mr. John S. Miller, Mr. Chauncey W. Martyn.

HENRY E. FELTON recalled, and his direct examination resumed, as follows:

WITNESS. I should like to say that Mr. Martyn called my attention to a matter this morning which I think I have already corrected, but I should like this to go into the record: That wherever a fast freight line book shows Boston rates, or wherever I say a point in New England takes Boston rates, of course I refer to the Boston rates as quoted in a fast freight line book. I do not mean by that to say that the Boston rate would apply to a point that a fast freight line book shows is taking St. John rates or Quebec rates.

Mr. KELLOGG. I understood that.

WITNESS. Now, just one thing more. In speaking about the time it is alleged that the Standard Oil Company bought the Cudahy refinery at Kankakee, I was asked either by Mr. Kellogg or Mr. Rosenthal if the Standard had a plant at Kankakee at the
10093 time the 6-cent rate was put in. I said no. My answer was based on a statement made before Mr. Garfield by Mr. Page, who was in charge at that time. He said that the Standard had no refinery there. It appears from what happened here on Friday that there was some sale of the property, or that it was so alleged. I do not know anything about that. I think it is immaterial, but still I should like to have my record as clear as I can get it.

Mr. ROSENTHAL. I offer in evidence a map showing the various railroads from Chicago to several points in the Mississippi Valley, and ask that it be marked Defendants' Exhibit 185.

(Paper so marked.)

By Mr. ROSENTHAL:

Q. Now, did you cause to be prepared, Mr. Felton, a map correcting petitioner's Exhibit 672, showing the New England territory that was actually opened to the prorating arrangement? If so——

Mr. KELLOGG. Wait a moment, Mr. Rosenthal. About this Exhibit 185, you said you offered in evidence a map showing the various railroads from Chicago to the Mississippi River points.

Mr. ROSENTHAL. Certain Mississippi River points.

Mr. KELLOGG. Not all points?

Mr. ROSENTHAL. Oh, no; only to certain Mississippi River, or Mississippi Valley, points, I should say, concerning which there will be testimony later on.

(Another map marked Defendants' Exhibit 186.)

Q. How is that prorating map marked?—A. Defendants' Exhibit 186.

10094 Q. Will you explain defendants' Exhibit 186, please?—A. There is a full explanation shown on the map.

Q. And it is accurate, is it?—A. I instructed that such a map be very carefully prepared. I did not do any of the work.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 186.

By Mr. KELLOGG:

Q. Now this map, defendants' Exhibit 186, I suppose was intended to show the New England territory on which they prorate on oil? This is not other commodities?—A. This is oil; yes, sir.

Q. Excluding the short line from White Creek to Rutland, the other red lines north of the blue lines there, the Boston & Albany and Boston & Maine blue lines, you claim prorate by reason of that Toledo-Grand Trunk tariff, do you?—A. Very largely. As I recall those numerous exhibits, there were some other combinations that applied rates into that territory.

Q. Principally that Grand Trunk tariff? It is the only one you have——A. Yes; the statement on the exhibit so reads.

Q. You do not claim that all that red line territory prorated from Oil City and Pittsburg and Cleveland?—A. No; the rates from Cleveland and Oil City were made on a different basis than what is shown on this map.

Mr. MARTYN. The language on that map follows substantially the testimony of Mr. Schindler. He shows on his map the territory that was open to prorate on petroleum and its products, without
10095 saying from what point. That map shows they prorate from any independent refining point.

Mr. KELLOGG. No; that is not correct, according to Mr. Felton's testimony; not at all.

Mr. ROSENTHAL. Not from all independent—some.

Mr. MARTYN. Some.

Mr. KELLOGG. Some independent; that is it. Our testimony was that the Boston & Albany and the Boston & Maine blue lines, the Fitchburg division of the Boston & Maine, that they prorated from all independent points; but, as I understand you, on this map the red lines show only prorating from Toledo by the Grand Trunk tariff which you have heretofore described.

WITNESS. I think——

Mr. MARTYN. The tariffs are listed there.

Mr. KELLOGG. There is only one tariff listed there. The I. C. C. No. S-460, called the Rutland Railroad tariff on your exhibit, applies from White Creek to Rutland?

WITNESS. Yes, sir.

Mr. KELLOGG. The red line from White Creek to Rutland?

WITNESS. Yes, sir.

Mr. KELLOGG. Now, with that exception, the balance of the red lines show prorating simply from Toledo under the Grand Trunk tariff cited in this exhibit, which you have heretofore testified to?

WITNESS. That is correct, in accordance with the explanation on the map.

Mr. MARTYN. It is also a fact, as will appear from the other exhibits, that the B. & O. tariff 4538 makes rates from Cleveland to a considerable portion of this territory.

10096 Mr. KELLOGG. Wait a minute, then.

WITNESS. That explanation should be on the map, then.

Mr. KELLOGG. It is not on here.

WITNESS. No.

Mr. KELLOGG. And so far as this map is concerned, you refer simply to the Grand Trunk tariff?

WITNESS. That is the way it reads.

Mr. KELLOGG. Now, as to that, do you claim that the Grand Trunk Railroad prorated with the lines shown in red on this map, or that the lines shown in red on this map exacted their locals and compelled the Grand Trunk to absorb them?

WITNESS. I only claim that the tariff to which this map makes reference named through rates, and in most all cases Boston rates, from Toledo to points shown.

Mr. KELLOGG. But the New England roads shown in red on this map would under those very tariffs, under their own tariffs, exact from the Grand Trunk their locals, wouldn't they?

WITNESS. There is nothing on the tariff, 944, that indicates that.

Mr. KELLOGG. There is on the other companies' tariffs?

WITNESS. Nothing, I understand, that qualifies tariff 944.

Mr. KELLOGG. Where do you find anything——

WITNESS. I don't know.

Mr. KELLOGG. In any one of those tariffs——

WITNESS. If you are leading up to a question on how the 27-cent rate divides, my answer is that I have not the slightest idea.

10097 Mr. MARTYN. You don't know any more about that than you do about the division on other commodities?

WITNESS. No.

Mr. KELLOGG. Don't you know that the New England roads did not prorate with the Grand Trunk road on that 27-cent rate?

WITNESS. No, sir; I do not.

Mr. KELLOGG. That is all now. I will cross-examine him on that later on.

By Mr. ROSENTHAL:

Q. When you were asked the other day concerning a comparison of rates from Wellsville and Olean, you only referred to several east-bound tariffs. Have you since ascertained whether your same statement with respect to comparative rates from those two points also accurately applies to west-bound rates?

(Papers handed to witness by Mr. Lown.)

A. I asked for some additional tariffs that would meet Mr. Kellogg's question last Friday, that the Wellsville refinery east-bound

must necessarily take not more than the Olean rates, on account of it being intermediate.

Q. What have you found with respect to west-bound rates? Give us the tariff authorities on which your statement is based.—A. I have before me Erie Railroad tariff I. C. C. 3324, naming rates on oil from Wellsville, New York, and Erie Railroad tariff I. C. C. 3576, naming rates on oil from Olean, New York. The Wellsville tariff became effective November 7, 1902; the Olean tariff May 22, 1903. I will take a few of the prominent points, first reading the rates in the Wellsville tariff and then in the Olean tariff. Chicago, Illi-
10098 nois—I think I will specify each time—Chicago, Illinois, from Wellsville, 19½ cents; from Olean, 19½ cents. Cincinnati from Wellsville, 14 cents; from Olean, 14 cents. Now, I imagine that Olean——

Q. As a matter of fact——A. Just a minute. I find that the word "Olean" is written in the Buffalo column in red ink, and I assume there was an explanation——

Mr. Lown. The face of the tariff explains that. It refers to that tariff, Olean to Buffalo.

A. Wait a minute. The tariff provides for what I am speaking of, though it does it in rather a peculiar way: Indianapolis 15½, Olean 15½. There is no column in the rates I am reading headed "Olean," but the reference on the first page of the tariff—the tariff itself applies from Olean. Then it says on the first page the rate shown in Joint Freight Tariff No. A–623 I. C. C. No. 1200, in column headed "Buffalo, New York." Those tariffs, with some exceptions, practically apply the same rates from both Wellsville and Olean.

Q. Isn't there only one exception, that of Lynn, Indiana?—A. I have not gone all the way through the tariffs. This is the first time that I have inspected them, right now.

Q. Will you please examine them and see?—A. I will go through them further if you want me to. If you want a check made of all points, it will take about an hour to do it.

Mr. Rosenthal. I understand they have been checked up, and that the only difference between Wellsville and Olean rates is in
10099 connection with Lynn, Indiana. I made that statement on the record, and we offer the tariffs to the Government for inspection, for the purpose of checking that up. And Lynn is a place of only 700 or 705 inhabitants.

(The defendant wishes to withdraw defendants' Exhibits 106 and 107 as originally offered, and to substitute in lieu thereof another exhibit which may be marked 106.)

Q. Mr. Felton, have you examined defendants' Exhibits 106 and 107, two exhibits that you testified to some days ago?—A. I have them before me.

Q. Have you caused another exhibit to be made up, combining the information embodied in the former Exhibits 106 and 107, with some slight changes, and with a more specific statement of the authority on which the figures are based?—A. Yes, sir; I have.

Q. And is the exhibit marked this morning defendants' Exhibit 106 the exhibit which you have so prepared?—A. Which I have caused to be prepared; yes, sir.

Mr. ROSENTHAL. I offer it in lieu of defendants' exhibits heretofore offered and heretofore marked defendants' Exhibits 106 and 107.

(Papers marked defendants' Exhibits 187 and 188.)

Q. From time to time since your connection with the Standard Oil Company, Mr. Felton, have you caused to be sent circular letters to the various men handling freight traffic matters connected with your company, with a view to cautioning them in connection with freight rates—with the taking of proper freight rates?—A. I have.

Q. Do you remember when you sent out your first letter?

10100 Mr. KELLOGG. Now, wait a moment. Let us have the letter. That is the best evidence.

Mr. ROSENTHAL. The question now is if you remember when you sent out your first letter.

Mr. KELLOGG. If he will just confine his answer to that question, very well.

Q. The 1903 letter we haven't got.—A. My memory is that the first letter I sent out was on February 7, 1903, and my memory is refreshed on that by the reference made to that letter in one issued subsequently.

Q. Have you looked for the 1903 letter?—A. I have.

Q. Have you been able to find it?—A. No, sir.

Q. Now, I show you defendants' Exhibit 187, being a letter dated February 3, 1905, and defendants' Exhibit 188, being a letter dated August 24, 1906. Please state whether copies of such letters were sent or caused to be sent by you to your different freight traffic men at the dates indicated in these two respective letters.—A. That is correct. I did.

Mr. ROSENTHAL. I offer defendants' Exhibits 187 and 188 in evidence.

Mr. KELLOGG. I notice your letter of February 3, 1905. At the time this letter was sent out Congress had passed a resolution directing the Department of Commerce and Labor to investigate the Standard Oil, hadn't it?

WITNESS. I don't remember the date on which that resolution was passed. I could not say.

Mr. KELLOGG. It was before January 1, 1905, wasn't it?

WITNESS. Yes; but I had sent out a previous letter in 1903.

10101 Mr. KELLOGG. I know, but I am asking you is it not a fact——

Mr. ROSENTHAL. You said, "Yes; but I had sent out a previous letter." Do you mean by that that you know the date when that resolution was passed?

WITNESS. No, I did not mean that "yes" to apply on that. I will say that I do not know the date on which that resolution was passed.

By Mr. KELLOGG:

Q. Is Exhibit 187 made from a letter-press copy?—A. No; we had no letter-press copies. It was made from a mimeograph copy. It was mimeographed.

Q. You keep in your office copies of these letters, do you?—A. I kept in my office the mimeograph copies of these various letters that we sent out.

Q. That is your custom, isn't it? A. Yes; a thing of this kind of course, to keep it as a matter of reference.

Q. Now, why didn't you keep a copy of the one you sent in 1903?—A. It may be that the letter of 1903 was not mimeographed. I could not say. At all events, when I came to look over the file I could not find anything back of this letter of February 3, 1905. Whether it was kept in some other form two years previously I could not say.

Q. Isn't it your custom to keep letters of that importance?—A. It is our custom—my custom—to keep matters of importance up to a certain time; but of course you can not keep those forever, because your files would be burdened.

Q. I know, but do you have any recollection of giving orders to destroy the letters of 1903?—A. No, sir.

10102 Q. Have they been destroyed?—A. Not that I know of. I simply could not find that letter.

Q. Then, you don't know that you took a copy of it?—A. The only reference that I can give you to the letter of 1903 is the reference shown on the letter of 1905.

Q. But I ask you if it was not customary to keep copies of letters of that importance?—A. Yes, sir.

Q. Then, you can't explain why that is not in the file?—A. No, sir; I can not.

Q. Isn't it a fact that the Department of Commerce and Labor had commenced their investigation of the Standard Oil generally as early as January 1, 1905, and circulars had been sent out to retail dealers over the country?—A. I couldn't say.

Q. You don't know as to that?—A. No, sir; I do not recall the dates.

Q. But don't you recall that it was along about that time?

Mr. ROSENTHAL. We would like to get the exact proof of that. I have been trying to get it in this record ever since we started.

Mr. KELLOGG. I was not aware that you had. It can be given you with perfect exactness.

Mr. ROSENTHAL. That is what we would like to have, because I have a number of times made statements in that regard, as to the length of time that the Department of Commerce and Labor has had this subject-matter under investigation, and in every instance counsel representing the Government have denied the accuracy of my statement, contending that the time was shorter than I had stated.

10103 Mr. KELLOGG. Mr. Rosenthal, you are entirely mistaken as to that. You said the Department of Justice——

Mr. ROSENTHAL. No; I beg your pardon——

Mr. KELLOGG. ——had been investigating.

Mr. ROSENTHAL. I beg your pardon.

Mr. KELLOGG. I said that the Department of Justice had not——

Mr. ROSENTHAL. My statement that I made at Cleveland, when you were not present, was quite to the contrary.

Mr. KELLOGG. You can have the exact time the Department of Commerce and Labor sent out those circulars. They went broadcast, I think, over the country.

Mr. DURAND. About January 1, 2, or 3, 1905.

Mr. ROSENTHAL. Well, we do not want any "about." We would like to have the exact time.

Mr. DURAND. They were mailed at different dates, January 1 and January 2.

Mr. ROSENTHAL. We would like to have an opportunity to cross-examine you on that statement, Mr. Durand, if it is going into the record. We must decline to accept your across-the-table statement.

Mr. KELLOGG. You asked him and got it. I did not ask him to state it.

Mr. ROSENTHAL. No; you are entirely mistaken.

Q. Mr. Felton, the only reference you have, then, to the letter of 1903 is in this letter of February 3, 1905?—A. That is all.

Mr. ROSENTHAL. When we get back to New York, we will
10104 make further search. I think we will be able to find the letter of February, 1905. Mr. Crossland, did those Southern Railway tariffs come yet?

Mr. CROSSLAND. They have not come in yet. They have been sent, but they have not arrived.

Mr. ROSENTHAL. There was a tariff which you gentlemen agreed to furnish us, used by Mr. Boltz, which we have not gotten yet.

Mr. KELLOGG. It is here. It has come.

(Papers handed to Mr. Rosenthal.)

Mr. ROSENTHAL. We will take the opportunity now of checking up these rates as stated by Mr. Boltz, with the rates found in this tariff, and we may offer proof thereof later on. We called for the tariff Mr. Boltz referred to as the basis for his table.

Mr. KELLOGG. You have got it. We have given it to you.

Mr. ROSENTHAL. But we have not got it. You have given us another table—another tariff.

Mr. MARTYN. This names other rates and different rates than were in effect at the time.

Mr. KELLOGG. Mr. Boltz used the tariff we have given you, as the authority for his rates in that exhibit. In citing the tariff he got the tariff number mixed with another tariff, but the rates are those cited in that tariff which we have now given you.

Mr. ROSENTHAL. In other words, Mr. Boltz has cited here, as authority for his rates shown in the exhibit which he put in, a tariff marked I. C. C. No. A–1791, effective June 1, 1906, in-

10105 stead of the tariff No. 192, I. C. C. No. A–822, effective September 22, 1902?

Mr. KELLOGG. Yes, sir.

Mr. ROSENTHAL. And your claim is that it was a mere mistake by him in the reference?

Mr. KELLOGG. Yes; and the way the mistake occurred was that he had the sheets from that tariff, checking them, inside of the tariff of 1902, and by mistake took the date on the tariff of 1902.

Mr. ROSENTHAL. Where is Mr. Boltz? Is he around here now?

Mr. KELLOGG. He will be here. He is not here to-day. He went back to Cleveland.

Mr. ROSENTHAL. So that the fact is that the rates given in his exhibits are the rates that were effective, then, June 1, 1906, and not September 22, 1902?

Mr. KELLOGG. Yes; that is correct.

WITNESS. Now, we will check the exhibit against that tariff, I think. Mr. Lownde, see how those compare.

Mr. ROSENTHAL. And there is no claim that the rates stated by Mr. Boltz in his exhibit were the rates that were effective in 1902, or between 1902 and 1906?

Mr. KELLOGG. I presume not, although I am not sure about that; but that can be found by running down their tariffs. But you will see that that tariff that you have there before you is an entirely different tariff from the one we had the other day. The one we had the other day did not contain any of those rates, so I knew there must be some mistake about it, and the mistake occurred as

10106 I tell you. We had the sheets of this tariff, checking them up, inside the others.

Mr. ROSENTHAL. Have you got Mr. Boltz' exhibit here by number? I should like to make a motion with respect to that.

Mr. KELLOGG. We have let you correct a great many of your exhibits. I don't know why we should not correct that one. It is a mere error in the tariff citation. You have pulled out half a dozen exhibits here and corrected them, and put in others.

Mr. ROSENTHAL. I am not finding any fault with your correcting the exhibit at all, but an exhibit based upon a 1906 tariff in connection with his testimony presents an entirely different situation than an exhibit based upon a 1902 tariff.

Mr. KELLOGG. But he did not testify that those rates were in force from 1902 to 1906. He simply put in a schedule of rates, and at the bottom is a reference to the tariff. That tariff might have been in force; but he happened to use the wrong number in citing it. It is not even the tariff that he made up the exhibit from at all.

Mr. ROSENTHAL. Well, let us have the exhibit and we will see. We will check them up.

Now, until we get those Culp-Green tariffs, we are through with Mr. Felton on the direct.

Cross-examination by Mr. KELLOGG:

Q. Mr. Felton, what is your position with the Standard Oil Company?—A. I have to do with freight matters.

Q. You have general charge of the freight shipments, have you?—A. In an advisory way.

10107 Q. Well, what do you mean by an advisory way? Who is at the head of the freight traffic department of the Standard Oil companies?—A. I am the head of the New York department.

Q. You mean that your office is at 26 Broadway, New York?—A. Yes, sir.

Q. That is, you are at the head of all of the shipping department?—A. I am the head of the department as it exists at 26 Broadway; yes, sir.

Q. Well, I want to know how it exists at 26 Broadway.—A. We have a freight department there and I am the head of it.

Q. What is that freight department? What does it include?—A. I don't think I quite get what you mean by "what does it include."

Q. Does it include the railway traffic and shipments on all products manufactured by the Standard Oil all over the country?—A. Yes; qualifying my answer by saying that in some respects my position is an advisory one.

Q. In what respect?—A. I am not an employe of some of the companies.

Q. What companies are you a direct employe of?—A. I am a direct employe of the Standard Oil Company of New Jersey, New York——

Q. What is the name of your office?—A. —— and Indiana.

Q. And the Standard Oil of Indiana?—A. Yes, sir.

Q. That is, you are a direct employe of the Standard of New Jersey, the Standard of New York, and the Standard of Indiana?—A. Yes, sir.

Q. Any of the other Standard companies?—A. No, sir.

10108 Q. How long have you been so employed by those three companies?—A. Oh, for some time. I do not recall.

Q. About how long?—A. The Standard Oil Company of New York, since I first went with the Standard Oil Company.

Q. In 1898 or '7?—A. Yes; the Standard Oil Company of Indiana, a few years later, but I don't recall the date.

Q. About 1899?—A. No; I think it was later than that.

Q. About 1900?—A. I think possibly 1902 or 1903.

Q. Now, the Standard of New Jersey?—A. The Standard of New Jersey, some period later than that.

Q. You went with the Standard companies at what date?—A. In May or June, 1898.

Q. About when did you go with the Standard of Indiana, in reference to that time—about two years later?—A. No; I have already said I think it was along in 1903 or 1904.

Q. Well, you said '2 or '3 before. Now, which is it, '3 or '4, or '2 or '3, or '4 or '5?—A. I said '2 or '3. If you will read the questions, you will find that I answered along the line of your questions.

Q. Haven't you got any record of it?—A. No; I have not got that in my mind.

Q. What is the name of your office?—A. I have no title. My office is simply called the freight office, and sometimes called the freight department.

Q. The freight traffic of that company was under your general charge before that, the same as since, was it not?

10109 Mr. ROSENTHAL. Of what company?

Q. The Standard of Indiana.—A. In an advisory way; yes, sir.

Q. That company ships its refined oil principally in the Union Tank Line cars, doesn't it?—A. Altogether in Union Tank Line cars, except where it ships barreled oil.

Q. That is one of the companies of the Standard Oil Company of New Jersey?—A. The Union Tank Line Company?

Q. Yes.—A. The Standard Oil of New Jersey, as I have testified once before, holds a majority of the stock of the Union Tank Line Company.

Q. You say "in an advisory way." Describe to me the traffic, and in what way you mean by "an advisory way" you had charge of the traffic of the Standard Oil of Indiana before you became an official of that company.

Mr. ROSENTHAL. He did not say he had charge of it. He said that he acted in an advisory capacity with respect to the traffic of the Standard of Indiana.

A. While I went to work for the Standard Oil Company in 1898, the correspondence was not conducted in my name until 1902. I was simply an employe of the Standard Oil Company, working under Mr. Howard Page.

Q. Mr. Howard Page was the traffic manager at that time, was he?—A. He held a position similar to the one that I hold now.

Q. And what was your title before you became the traffic manager?—A. I had no title.

Q. What was your position under Mr. Page?—A. I was

10110 simply a clerk or an employe working in the freight office under Mr. Page.

Mr. ROSENTHAL. This is not a company of titles, you know.

Q. When you left the Lake Shore road, what was your position on the Lake Shore?—A. General freight agent.

Q. General freight agent of the Lake Shore Railroad. Do you mean to say you left the position of general freight agent of the Lake Shore road to become a clerk in Mr. Howard Page's office?—A. I resigned the position of general freight agent of the Lake Shore road to go to work in their freight department under Mr. Howard Page, and my identity was completely lost for three years, and I went there——

Q. You had no title and no authority over the traffic?—A. Absolutely not, except as Mr. Page directed me.

Q. In the absence of Mr. Page, or when Mr. Page was not at the office, what position did you have?—A. Why, my advice, if sought, would be taken in a great many ways, but there was another assistant to Mr. Page at that time.

Q. Who was he?—A. His name was C. E. M. Hodge.

Q. You were also an assistant to Mr. Page?—A. Yes, sir.

Q. When did Mr. Page resign?—A. Mr. Page resigned—you mean from the Standard Oil Company, completely?

Q. Yes.—A. When he left the employ of the Standard Oil Company?

Q. Yes.—A. I think it was sometime in 1906, perhaps in the early summer.

Q. But before Mr. Page resigned you had become an officer of these companies, had you?—A. I have never held any title except with the Union Tank Line Company.

10111 Q. What do you mean by saying you became a direct employe, then, of the Standard of Indiana?—A. How is that, sir?

Q. What do you mean by being an employe of the Standard of Indiana?—A. I mean by being an employe of the Standard of Indiana that I am in the employ of that company.

Q. In charge of the traffic?

Mr. ROSENTHAL. He has never said that.

A. No; not in direct charge of the traffic.

Q. What is your capacity?—A. In an advisory way.

Q. In an advisory way to whom?—A. Mr. Edgar Bogardus.

Q. Suppose you give directions, isn't it Mr. Bogardus' duty to follow them?—A. If I should suggest to Mr. Bogardus that something be done, and after looking over the local situation and finding that there was nothing unreasonable in my suggestion, as having in view the affairs of the company, the chances are that he would carry it out; yes, sir.

Q. But he is under no obligation to?—A. If Mr. Bogardus thinks I am wrong about a matter, he does not hesitate to say so.

10112 Q. I know, but if you finally think you are right and give him directions, is it his duty to follow them?—A. We have had differences of opinion, and sometimes——

Q. Please answer that question. You know just exatly what I mean.

Mr. ROSENTHAL. Please answer it in your own way.

A. If he admits that my view is right, he follows it.

Q. That is not the question. If you come to the conclusion that a thing should be done and give him directions, is it his duty to follow you?—A. I cannot recall an instance where I have given him arbitrary instructions without consulting with him, on matters of importance.

Q. Have you the authority to do it?

Mr. ROSENTHAL. Have you any authority in that connection at all?

Mr. KELLOGG. Now, wait a minute, Mr. Rosenthal, I have not interrupted you. Let me cross-examine this witness, please.

Mr. ROSENTHAL. I know, but——

WITNESS. I should say not. He would have a right to appeal to the president of the Indiana company.

Q. Then, you have no authority over that company at all?—A. Yes, I have considerable, in an advisory way.

10113 Q. You say you became an employe of that company. What is the nature of the office that you hold?—A. I don't quite understand what you mean by the word "nature."

Q. I mean what office do you hold with the Standard of Indiana?

Mr. ROSENTHAL. He hasn't said he held any office.

Mr. KELLOGG. Let him answer. He knows what I mean.

Mr. ROSENTHAL. He said he was an employe.

A. I am in their employ in an advisory capacity.

Q. What do you call——A. What do I call what?

Q. The office. What is the name of it?—A. In an advisory capacity with respect to freight matters.

Q. Give us the date, now, as nearly as possible, when that occurred.—A. When what occurred.

Q. When you were appointed.

Mr. ROSENTHAL. I submit he has already answered it—that it was 1902, '03, '04, or '05, he cannot fix the date.—A. I could not give you the date, Mr. Kellogg, because I do not know it.

Q. Don't you know it within four years?—A. I am not certain whether I became an employe of the Standard Oil Company of Indiana in 1903 or 1904, and really that is all I can recall.

Q. Are you certain whether it was not in 1902?—A. I am quite sure it was either in 1903 or 1904.

Q. Is there any record of it in the Standard's office?—A. I could not say.

Q. Will you look and see?—A. I will.

Q. And produce the record?—A. I will.

Q. Did you draw a salary from the Standard of Indiana?—

10114 A. Yes, sir, I did.

Q. Commencing with your appointment?—A. Yes, sir; as I recall.

Q. The records will show from what time you commenced to draw salary, will they?—A. I assume they will.

Q. And the records will show what your position was called, will they not?

Mr. ROSENTHAL. If anything.

A. I don't know how the pay-roll records are kept.

Q. Now, while you were, as you say, a direct employe of only these three companies—or four companies, the Union Tank Line, the Standard of New Jersey, the Standard of New York, and the Standard of Indiana—what was your jurisdiction over the freight traffic of

all the other companies shipping by rail?—A. They frequently came to me for advice, which I gave.

Q. What was your jurisdiction over them? What was your authority over them?

Mr. ROSENTHAL. If any?

A. I would like to answer that in a general way.

Q. No; I want specific answers.—A. No individual has authority with the Standard Oil Company. No man has control. For instance, the Standard Oil Company of Indiana might buy a lot of oil from the Atlantic Refining Company at Franklin. Franklin might ask me how that oil should be routed and how that oil should be rated. I would give them the information. But no one has control. If I tell Mr. Bogardus to do a thing and he does not think it is right, he does not have to carry it out. He can take it to his president.

Q. Well, his president is subject to the orders of the Stand-
10115 ard of New Jersey?—A. Not that I know of.

The following question was read by the reporter: "What was your jurisdiction over them? What was your authority over them?"

Mr. ROSENTHAL. It does not appear that he had any jurisdiction at all or any authority at all. The question assumes that he had both.

Mr. KELLOGG. Well, we will see.

Q. Your office is at 26 Broadway, New York, is it?

Mr. ROSENTHAL. He has already testified to that.

A. I have so testified.

Q. In the Standard Oil building?—A. Yes, sir.

Q. How many employes have you under you?—A. I have to-day a great many more men that I had in 1902, 1903, and 1904.

Q. Does that answer my question?—A. I wish to qualify it, because I have to-day in the freight office some 32 or 33 men, while in 1902, 1903, and 1904 we had only about 11.

Q. You have now about 32 or 33 men?—A. Yes, sir.

Q. In charge of your office?—A. Yes, sir.

Q. In 1902, 1903, and 1904 you had about 11?—A. Yes, sir. I am talking now about the freight office and not about the Union Tank Line.

Q. You are talking about the freight office as distinguished from the Union Tank Line?—A. Yes, sir.

Q. Is the Union Tank Line office also in your office?—A. It is in 26 Broadway, but on another floor.

Q. How many employes have you in that office?—A. I think we have something like 80 junior clerks down there watching the
10116 movement of tank cars.

Q. Now, you are vice-president or president—which is it—of the Union Tank Line?—A. I am president of the Union Tank Line.

Q. And have been since February, 1906?—A. I think that is the date; yes, sir.

Q. Previous to this time what was your position with the company?—A. I was vice-president for two years previous to that time.

Q. Previous to that two years what was your position?—A. I had nothing to do with the Union Tank Line at all.

Q. In no capacity whatever?—A. No, sir.

Q. Who was the vice-president?—A. Mr. Howard Page.

Q. Who became president after he resigned?—A. I succeeded him as vice-president.

Q. Well, he became president?—A. He was never president.

Q. Who was the president?—A. Mr. W. H. Tilford.

Q. For how long previous—several years?—A. I don't know, sir.

Q. Now, will you look up and see when you commenced to draw a salary from the Standard of Indiana?

Mr. ROSENTHAL. You have already asked him that.

A. You have asked that.

Q. I didn't know whether I included that.—A. Yes, sir.

Q. Also the Standard of New Jersey and the Standard of New York.—A. Yes, sir.

Q. If I understand you correctly, you became an employe of the Standard of New York much earlier than you did of the
10117 Standard of Indiana?—A. Yes, sir.

Q. About when was that?—A. I went with the company in 1898.

Q. Now in your office, at 26 Broadway, you have some 30 to 35 employes?—A. At present; yes, sir.

Q. In a general way, what are their duties?—A. Almost all of them now are engaged in taking the great mass of railroad tariffs as they come in and sifting them and indexing them and filing them, so that we may have a good file of tariffs.

Q. What was their business from 1902 down to 1905 or 1906?—A. Practically the same kind of work.

Q. The same kind of work?—A. Only we did not have as complete a file as we have now.

Q. In 1903 and 1904 how many men did you have?—A. I think about 15. The number has increased as the tariff complications have increased.

Q. The business of your men, ever since you have been with the Standard Oil companies, has been to look after the tariffs and the rates on the various roads, hasn't it?—A. Yes, sir.

Q. And it is your business to supervise that?—A. Yes, sir.

Q. All over the United States?—A. Yes, sir.

Q. In every State?—A. Yes, sir.

Q. And your business is to look after the rates that you pay the railroads, and the tariffs throughout the United States, isn't it?—A. That is correct.

Q. And of that department you have general charge, subject to the board of directors and the superior officers of the Standard Oil of New Jersey, haven't you?—A. I have no superior officer with respect

10118 to that office, except, as I have said, that Mr. Bogardus might contend that I did not do right, and then he would go to the president of the Indiana company; but the board of directors has nothing to do with freight matters.

Q. Now, during the time you have been with the Standard Oil, please describe the methods of keeping your tariff department.—A. As a tariff comes in it is compared with the one that it revokes.

Mr. ROSENTHAL. What is the relevancy of this, so far as the direct examination is concerned or the equity case is concerned? Isn't it apparent that you are simply fishing for testimony to assist the assistant district attorney in charge of the criminal prosecutions, who sits at your elbow prompting these questions?

Mr. KELLOGG. No, sir; not at all.

Mr. ROSENTHAL. You have not asked a question with respect to Mr. Felton's duties nor the régime of his office that has the slightest bearing upon any issue in the equity case, and it is manifest that you are merely seeking to get testimony to assist in the criminal prosecution; and for that reason we are going to try to hold you down just as closely as we can.

Mr. KELLOGG. Now, you can enter your objection, but as to what is relevant I shall certainly ask the court to decide, and, so far as what questions I shall ask——

Mr. ROSENTHAL. Mr. Wilkerson——

Mr. KELLOGG. Wait a moment, now.

Mr. ROSENTHAL. Who has not a thing on earth to do with the equity case, who never has appeared in the equity case, who is the assistant district attorney in charge of the criminal prosecutions, is at your elbow now prompting these very questions.

10119 Mr. KELLOGG. Will you please read my statement as far as I got, so that I can finish it?

The reporter read as follows: "Now, you can enter your objection, but as to what is relevant I shall certainly ask the court to decide, and, so far as what questions I shall ask—— "

Mr. KELLOGG. I shall reserve the right to decide that myself. You can enter your objection.

Mr. ROSENTHAL. The objections do not show that you are being prompted by the prosecuting attorney in charge of the criminal prosecutions. I want to get that of record.

Mr. KELLOGG. That is the third time you have got it of record. Now, if the reporter will please read what I have stated, I would like to finish my statement.

Mr. ROSENTHAL. We will continue to get it of record as long as Mr. Wilkerson continues to prompt you, because that is the only way I can get it before this court.

Mr. KELLOGG. Now, please read what I said.

Mr. Kellogg's last statement was read by the reporter.

Mr. KELLOGG. So far as Mr. Wilkerson is concerned, I have a right and shall avail myself of all the sources of information as to the

violations of law by the Standard companies, or any of them, the records in all cases, and all other information.

Mr. ROSENTHAL. Of course you have that right. I do not question that right. I simply question the hypocrisy of the position you have taken from the beginning, that you have never asked a question or done a thing in this equity suit to assist the Government in connection with its criminal prosecutions.

Mr. KELLOGG. I have not and I am not now. I am seeking
10120 information for this case.

Mr. ROSENTHAL. It has been done from the time that you got the statement from the Standard Oil Company of Indiana and turned it over to the United States district attorney of this district to be used before the circuit court of appeals on an application to increase the supersedeas bond.

Mr. KELLOGG. I turned over a public record, or my associate, Mr. Morrison, turned over a public record.

Mr. ROSENTHAL. Neither one of you had the nerve to do it. You got around and induced the stenographer to do it without letting anybody on our side know anything about it.

Mr. KELLOGG. Now, that is absolutely untrue.

Mr. ROSENTHAL. I have the statement of the stenographer to that effect.

Mr. KELLOGG. Now, Mr. Examiner, I want to cross-examine this witness, and I am certainly entitled to be protected in my right to ask questions without being interrupted and insulted by counsel.

Mr. ROSENTHAL. You are neither interrupted nor insulted. I am getting simply certain statements upon the record that I can not get by way of an objection.

The EXAMINER. I wish you would complete all you have to say on each side, and then go ahead.

Mr. KELLOGG. I am waiting for Mr. Rosenthal to get through. When he is through I want to go on with this examination.

Mr. ROSENTHAL. I am through now. I replied to your last statement.

The following question was then read by the reporter:
10121 "Now, during the time you have been with the Standard Oil, please describe the methods of keeping your tariff department."

Q. Please answer that question.—A. We keep files of tariffs.

Q. And when they come in are they indexed?—A. They are quite carefully indexed now, but formerly we used to keep them loose in a drawer, and we had drawers for each set of tariffs. The tariff of the C. & E. I. road, when it came in, would be thrown in a drawer along with other C. & E. I. tariffs and the tariffs of some other roads that were grouped together.

Q. When did you commence the index system?—A. We started our present system, which is a binder system, I think about two years ago.

Q. Previous to that time what system did you have?—A. Previous to that time we had some tariffs in an old-fashioned kind of binder and some in drawers.

Q. But didn't you have a schedule of the rates taken off from these tariffs, which you preserved?—A. I do not recall any reason for keeping a schedule of rates so long as we had the tariffs.

Q. Didn't you have books in which you entered the sheets as they came in?—A. Yes, I think we had a few in which the rates were entered, of the more standard rates that did not change from time to time.

Q. Didn't you take off from those tariffs all the rates which you were going to use or which your companies would need to use, as they came in?—A. No; I wouldn't know any object of doing that. We had the tariffs and the rates.

10122 Q. You say that prior to the present system you had a system of binding up the tariffs?—A. I have said that it was incomplete. I have said that prior to the present system we had several chests of drawers, like a bureau, only with narrower drawers, and tariffs were put in there under any old cover that some of the clerks might make or get, and then they would paste on the outside C. & N. W. tariffs or C., M. & St. P., and if it was in the East we would have Pennsylvania Railroad or Philadelphia & Reading.

Q. That is, you kept a place for each railroad?—A. Yes, sir.

Q. A drawer in a cabinet for each railroad?—A. Yes, sir.

Q. Did you have any subsidiary offices throughout the country? Did the Standard Oil Company have a traffic department?—A. Yes; there was a man at Cincinnati who looked after the business in the South.

Q. Was he under you?—A. He corresponded and conferred with me very freely; he was not under me.

Q. Were all these men of all the subsidiary companies that had to do with the traffic in correspondence with you on this subject?—A. Yes, sir.

Q. Now, take the Standard Oil Company of Kentucky; did it have a tariff file?—A. I have never personally inspected the office in which freight matters were handled there, but I assume they had a file of tariffs.

Q. Have you ever been there in the office?—A. Yes; but the office where I would go was not the office where the tariff files were kept.

10123 Q. Have you been in the office where the tariff files have been kept?—A. I have not been in the office for several years, and so I do not recall.

Q. How many employes have they in that office?—A. I do not know, sir.

Q. Who is the man that has charge of that office?—A. Charles Van Overbake.

Q. And is he an employe of the Standard Oil Company of Kentucky, or also an employe of the Standard Oil Company of Kentucky and some other company?—A. I do not know.

Q. Is he an employe of the Union Tank Line?—A. Yes; he is an agent of the Union Tank Line—or he is not an agent, but he is a representative of the Union Tank Line, looking after cars that go through Cincinnati.

Q. Very well. Then he is an employe under you?—A. Of the Union Tank Line; yes, sir.

Q. Now, is Mr. Bogardus an employe of the Union Tank Line?—A. Yes, sir.

Q. Then he is an employe under you?—A. Under the Union Tank Line; yes, sir.

Q. How long has Mr. Bogardus been an employe of the Union Tank Line Company?—A. Several years, I think.

Q. Since 1897 or 1898, when you went with the company?—A. I could not say. I imagine he has been an employe of the Union Tank Line for quite a number of years.

Q. Well, don't you know?—A. Not without looking up the records; no, sir.

Q. Will you please look and see?—A. I will.

Q. Now, Mr. Felton, what kind of a traffic office have they
10124 at the Standard Oil of Indiana?—A. Mr. Bogardus has 8 or 9 clerks, I think, there, or 7 or 8 clerks, looking after the shipments and one thing and another.

Q. You have been in the office frequently, have you?—A. Yes, sir.

Q. Do they have tariff files also?—A. Yes, sir.

Q. Do they have the same system that you have?—A. No, sir.

Q. Do they have the cabinet system, where each railroad is marked separately?—A. I do not know what their system is to-day. Mr. Bogardus advised me a couple of years ago that he had changed his system.

Q. What did they have before that, before the two years ago?—A. I think before that they kept their tariffs very much like we did in my own office, namely, in covers—in pasteboard covers in drawers—but I am not sure about that.

Q. With each drawer marked for a separate railroad?—A. No; each drawer might contain the tariffs of half a dozen railroads.

Q. But each cabinet, or paper cabinet, or whatever you call them, was kept separate? I mean each railroad was kept separate in the folder, or whatever you call it?—A. As a rule there might be three or four or five railroad tariffs kept in the pasteboard covers that were in the drawers. It may be something like the cover used by the stenographer for the testimony here, only they would not be bound. They would just be thrown in there loosely.

Q. Your duty is to consult with railroad officials all over the United States in relation to fixing freight rates and getting
10125 the best rates you can, is it?—A. Yes, sir.

Q. And you are and have been in constant communication with railroad officials on that subject?—A. I have.

Q. Either personally or by correspondence?—A. Yes, sir.

Q. And do you attend traffic meetings at times?—A. I have at times; yes, sir.

Mr. ROSENTHAL. Do you mean attend the meetings themselves?

WITNESS. Oh, no. I go to the places where meetings are held, but of course I do not attend the meetings.

Q. Take, for instance, the Western Trunk Line Association. You go to places where they hold their meetings and confer with them before they have their meeting and after they hold their meeting?—A. That is true. Not very often, but at times.

Q. And you at times appear before committees of those associations?—A. Not very often. I have occasionally appeared before railroad committees and stated my request for what I thought should be done.

Q. Now, you gave us an exhibit here this morning which purports to show the tonnage in petroleum and other products of the Standard companies in the United States. That, of course, is on railroads, not by water transportation?—A. That is all railways, taken from the Interstate Commerce Commission records.

Q. And the total oils transported is taken from the records of the Interstate Commerce Commission?—A. As shown on that statement. That is my authority for those figures.

Q. Now, oil is not the only product shipped by the Standard companies, is it?—A. Oil and the products of oil.

Q. Under the heading "Petroleum and other oils," these
10126 figures do not contain all of the shipments of freight by the Standard companies?—A. I do not know whether the Interstate Commerce Commission, in compiling that statement, included candles and axle grease and other things or not.

Q. You know they did not include barrels and pipe and many other things that the Standard companies ship, don't you?—A. Oh, it is very evident those figures cover, as they read, petroleum and other oils.

Q. You do ship at times a large amount of other products, do you not?—A. The Standard Oil Company has shipped to them and ships itself traffic other than oil.

Q. What are those principal items of traffic?—A. They have shipments of barrels and, as you said, pipe.

Q. Staves?—A. Yes, sir.

Q. Cans?—A. A small amount of cans.

Q. Pitch, tar, and turpentine?—A. That is true.

Q. Resin?—A. I don't think they are in the resin business at present. I have not heard of any resin shipments for some time.

Q. Do you have any idea of the total tonnage of all products other than those scheduled here as petroleum and other oils?—A. No; I have not.

Q. It is quite large, isn't it?—A. In the aggregate there is considerable of it.

Mr. ROSENTHAL. As compared with petroleum oil and its products it would be infinitesimal, would it not?

WITNESS. I should say as compared with petroleum oil it would be very small indeed.

Q. What do you mean by "very small?" Can you give us
10127 any idea?—A. I do not believe I could give you any comparative figures. The articles which you have named to me lately are merely incidental articles, while the shipment of petroleum and other oils is a steadily moving volume of traffic.

Q. Now, I notice here, tonnage in petroleum and other oils, 4,809,349 tons; estimated shipped by defendant companies, 5,362,519. Of that tonnage other than that shipped by the defendant companies, is not a large amount of it fuel oil shipped in Texas and in California and the southwestern States?—A. I could not say. I do not know from what sources the Interstate Commerce Commission compiled those figures.

Q. You do not know?—A. No, sir.

Q. Have you any idea of the revenue that this tonnage that you give of the Standard Oil companies yields to the railway companies?—A. No, sir.

Q. Can you give us an estimate of the average freight rate per 100 pounds?—A. I would not want to do that without taking time to think it over or getting some data.

Q. Can't you give it to us approximately?—A. No, sir.

Q. Haven't you records showing the total freight paid by the Standard companies?—A. No, sir.

Q. Doesn't your office keep track of that?—A. Not the total freight paid; no, sir.

Q. Doesn't it keep track of it by companies?—A. We have had some information of that kind, yes, sir; but not complete.

Q. What information of that kind have you had?—A. I could not answer that without looking over the records. We never keep any account of weights or of matters of that kind.

10128 Q. Well, doesn't your office keep records showing the total freight paid in the United States?—A. I have in my office the record of the amount of freight paid to some railroads, but it is not complete, and I do not recall any figures just now.

Q. Haven't you the record available, showing the amount of freight paid to all railroads in the United States?—A. No, sir; not that I know of.

Q. Well, most of them—the principal lines?—A. I could not say without looking them over.

Q. Taking the total tonnage of all kinds, including oil, shipped by all of the Standard companies, would not the freight amount to more than 12 or 15 millions per annum?—A. The figures which I have used there cover all the movement of oils—petroleum oils—in the United States which have been reported to the Interstate Commerce Commission. It would be a matter of folly for me to attempt off-

hand to give you an average rate on that traffic, and I would not attempt to do it.

Q. Now, you testified, as I recall, that there were 2,104 separate railroads in the United States.—A. I stated that I had counted that number from the "Statistics of Railways in the United States," issued by the Interstate Commerce Commission.

Q. And you also testified that there were 1,209 systems of railroads.—A. I testified, if that is the correct number—that that number of systems were found in that publication.

Q. You mean "Statistics of Railways in the United States" for 1904?—A. I do.

Q. Will you please take this book that you testified from, "Statistics of Railways in the United States" for 1904, and
10129 show me the column or columns of railways which you counted, showing the total number of railroads in the United States?—A. My testimony refers to specific pages. By referring to pages 140 to 276 you will find a great many railroads set out, and somewhere in this book there is a reference to this fact: That where the railroad appears flush with a line on the left-hand side of the page that is a separate railroad; where the roads under a railroad reading flush from the line are indented, that those roads are part of the system of the road that is shown as being flush.

Q. Do you mean you selected only those where the description comes out flush with the edge of the column for a system?—A. I am reading now from page 140 of that record: "Attleborough Branch Railroad Company, Bangor and Aroostook Railroad Company, Barre Railroad Company, Bartlett and Albany Railroad Company, Boston & Maine Railroad"—these are given as individual roads under the number 2,104. I gave all, all the way down, in the original number 2,104, but when I came to the systems I did not count the indented roads shown and those as being flush. In other words, I showed the Connecticut and Passumpsic Rivers Railroad Company, the Nashua and Lowell Railroad Corporation, and the Northern Railroad Company as being part of the Boston & Maine system.

Q. I think I can get at it. The first column, then, in all these pages you counted for the number of railroads in the 2,104 which you gave?—A. Yes, sir.

Mr. MARTYN. Those are numerical numbers.

Q. In other words, you took the total number of railroads
10130 as they appear set opposite the first column, for the number of railroads in the United States, didn't you?—A. I did.

Q. Then, for the number of systems you took those, you say, where the description comes out flush with the page?—A. Not counting the indented roads, so called. For instance, if I may explain, I counted as one system the New York Central & Hudson River, the Boston & Albany, the Chester and Becket, and those other roads that appear as indented under the New York Central & Hudson River caption.

Q. Then, you in fact counted the number of systems under the two columns "Line operated?"—A. No; I did not pay any attention to the line operated at all.

Q. Then you made 1,209 systems of railways, did you?—A. I did; yes, sir.

Q. Referring to page 140, you called the Attleborough Branch Railroad Company as a system, didn't you?—A. No; I called that as a railroad.

Q. Well, you also called it a system, according to your statement.—A. No; I called that a railroad. I called the Boston & Maine a system.

Q. Now, wait a moment. There is a road, the description of which comes out to the line [pointing on book].—A. I gave you two figures, 2,104 and 1,209, if I recall them correctly.

Q. Show me on that page which one of the descriptions does not come out to the line.—A. The Attleborough Branch Railroad Company I put under the head of the roads totaling 2,104. I also included it under the 1,209 of the systems.

10131 Q. That is what I thought. So there is a road which you included as one of the systems?—A. There is a road that I included under the heading "Systems;" yes, sir.

Q. And it has 3.57 miles of road?—A. It was explained, I think, when I gave my testimony, that the word "system" was used there to show that that was an individual road, having no traffic officers or general officers governing it by virtue of some road which controlled it. It is a separate entity. No matter how long it is, the Interstate Commerce Commission thought enough of it to put it in their book.

Q. But it is not a system of roads, is it?—A. It was not put in as a system of roads.

Q. You said it was put in as one of the systems; you just told me it was one of the 1,209 systems.—A. In using the word "system" it was used where there were four or five roads in one system, but this Attleborough Railroad was also included under the heading of the 1,209 roads that had separate organizations—controlling organizations.

Q. I know; but you included it as one of the 1,209 systems.—A. As one of the 1,209 railroads.

Q. No; as one of the 1,209 systems.—A. I will have to ask you to read my testimony, then, before I go any further on that.

Q. Now, will you please state again how you arrived at the systems, which ones you took?—A. I would like to read my testimony.

Q. Did you not say a few moments ago that you took those roads the description of which came out flush with the page line?—A. Please let me see my testimony and see how I used the word

10132 "system," and then I will answer you, Mr. Kellogg, very much in detail.

Q. I want to know now what systems you took.

Mr. ROSENTHAL. Take your time in looking up your testimony before answering that question.

Mr. KELLOGG. He has just described it once.

Mr. MARTYN. Yes; I thought he had two or three times.

A. I may have used the word "system" on an exhibit in a different manner from what I used it in my testimony, and if you are cross-examining me on my testimony I have a right to see it.

Q. Now, if you will look at your testimony, page 9650, and then please explain which are the systems and which are the individual roads.—A. (Reading:) "Q. You say about how many different railroad systems have you estimated that there are?—A. I find the number of systems to be 1,209." Now, then, ask your question, please.

Q. How did you arrive at the number of systems, referring to the book from which you testified?—A. I took all of the railroads named on the pages, except that I did not add the number of roads that were indented under some general road.

Q. Now, that is exactly what I asked you. Referring to page 140, show me which roads you took as separate systems?—A. For example, I took the first five roads.

Q. The first five roads?—A. Yes, sir.

Q. Then you took the Attleborough Branch Railroad Company as a separate system?—A. I did.

Q. Very well. That is what I was trying to get at. Now, turn over to page 146. Did you take the Horn Pond Branch Railroad Company as a separate system?—A. I did. I took every-

10133 thing in the list, regardless of mileage.

Q. That road has .66 of a mile, hasn't it?—A. It so appears by this statement.

Mr. MARTYN. You likewise took the New York Central as a system?

WITNESS. I took everything.

Q. How many systems did you make of the New York Central?—A. The New York Central I put in as one system, as I recall.

Q. You did? Now, let us see.—A. I might explain, Mr. Kellogg, if you please, in answer to what you are going to say, that I took the systems as shown in the book. I took the systems as described as systems by the Interstate Commerce Commission. I did not seek for any further information on that subject. Where they showed a number of roads under the New York Central as the New York Central system I took that as the New York Central system.

Mr. ROSENTHAL. We have no objection to your putting in those pages of that record.

Q. Are you familiar with the publication of the Interstate Commerce Commission known as "Special Report No. 1, Intercorporate Relations of Railways in the United States?"—A. I have never seen the book.

Q. As of June 30, 1906.—A. I have never seen it.

Q. You have never seen it?—A. No, sir.

Q. Is it not a fact that the Interstate Commerce Commission divide all of the railroads in the United States, or substantially all of the

mileage of the railroads of the United States, into 50 sys-
10134 tems and that a dozen or fifteen control the great majority or practically all of the mileage in the United States?—A. What is the date, if you please, of the volume you are reading from?

Q. The ownership is of June 30, 1906.—A. My testimony was given from the Interstate Commerce Commission Statistics of 1904.

Q. Yes; but you took every separate incorporation practically as a system.—A. I took the data as the Interstate Commerce Commission published it.

Q. Do they call it a system?—A. I think they do somewhere in that book. Will you look for that, Mr. Martyn, please.

Q. For instance, you took the Union Pacific and the Southern Pacific and the Oregon Railway & Navigation as separate systems, didn't you?—A. I could not say without looking at the book. I considered that the Interstate Commerce Commission record was good authority.

Mr. ROSENTHAL. It was—it certainly was before these suits were instituted. There is no telling what it is now, you know.

WITNESS. The Southern Pacific does not appear in this record as being part of the Union Pacific system.

Q. Then you took it as a separate system?—A. As shown in this record, issued in 1904.

(A recess was here taken until 2 o'clock p. m., at which time the cross-examination was resumed.)

Q. Mr. Felton, you are familiar with the large railroad sys-
10135 tems of the country, generally speaking, are you not?—A. Fairly well; yes, sir.

Q. That is, such systems as the Union Pacific, the Pennsylvania, the New York Central, the Santa Fe, the Great Northern, the Northern Pacific, and the Burlington; you are fairly familiar with their lines of road and where they run generally?—A. Yes, sir.

Q. Isn't it a fact that three-quarters of the railway mileage of this country is contained within fifteen to sixteen systems of railway?—A. I have made no computation or investigations along that line.

Q. You have no opinion on it whatever?—A. I have no opinion on that subject.

Q. You know, when you speak about 1,209 systems, that there are hundreds of little, small railway incorporations that are controlled by the big systems, do you not?—A. Using the distinction between the individual road and the so-called "system," I took the data from the Interstate Commerce Commission book of statistics for the year 1904, and made no further investigation.

Q. You assume that each corporation, such as you have described, was a system of railways, having separate management and separate control, do you?—A. There is a distinction drawn in that report as between the individual road and road that was consolidated with other properties. So, in making my answer I must call your attention to that fact, that I first mentioned 2,104 roads, and then cut that down to 1,209 in order to meet the figures given by the Interstate Commerce Commission.

Q. Do you remember the testimony of Mr. Steinbrenner, that the Galena-Signal Oil Company lubricated from 95 to 97½
10136 per cent of the railways?—A. I neither heard nor read his testimony.

Q. And that they had something less than 300 contracts?—A. I have stated that I neither heard nor read his testimony.

Q. I wish to direct your attention now to the situation in and around Olean, the rate from Olean to Burlington. You called attention to a tariff showing a 26½-cent rate from Olean to Norwood, over the Pennsylvania railroad, issued by the Pennsylvania Railroad Company in connection with the New York Central & Hudson River Railroad Company, did you not? (Handing witness tariff.)—A. I did.

Q. The Pennsylvania Railroad has a line from Olean to Rochester and a line from Olean to Buffalo, hasn't it?—A. They have.

Q. And the New York Central has a line from Rochester to Norwood and from Buffalo to Norwood?—A. They have.

Q. And the line from Buffalo to Norwood, one of their lines, goes through Rochester, doesn't it?—A. They have a route through Rochester; yes, sir.

Q. From Buffalo to Norwood?—A. They have a route from Buffalo to Norwood through Rochester; yes, sir.

Q. And that is the route they would actually use, isn't it?—A. Oh, I could not say as to that.

Q. Well, they have one, anyhow. Now, the New York Central is a party to this tariff, and those two lines, the Pennsylvania and the New York Central, are the only ways by which you can reach Norwood from Olean under that tariff?—A. No, sir.

Q. How?—A. The Pennsylvania road has a line to Newberry Junction, and at Newberry Junction you strike the New York Central. If you are going to set up the theory——

10137 Q. Never mind the theory.

Mr. ROSENTHAL. Go ahead with your answer.

WITNESS. That that rate is good via Rochester simply because it is good via Buffalo, those two systems connecting at Rochester and at Buffalo, then you must necessarily say, if that principle is good, that that rate is also good via every other junction between the Pennsylvania and the New York Central, and that would mean Newberry Junction, or, if you please, Jersey City by float to the New York Central across New York Harbor.

Mr. ROSENTHAL. Where is Newberry Junction?

WITNESS. It is halfway down the State.

Q. That is, you would consider this was a tariff from Olean to Norwood, both of them in northern and northwestern New York, by way of New York City?

Mr. ROSENTHAL. He has not said so.

A. I have not said so.

Q. Well, suppose it is.—A. I say that if you do not restrict the application of that rate to the route shown in the percentage sheet, then you have got to open the doors via all routes,

Mr. ROSENTHAL. Between all points.

WITNESS. Between the two roads.

Q. Now, I will come to that in a moment. On the face of this tariff it makes a rate from Olean to Norwood of 26½ cents, doesn't it?—A. The tariff so reads.

Q. And the rate would have to be via the two railroads; that is, the Pennsylvania Railroad and the New York Central, wouldn't
10138 it?—A. I think it provides somewhere there for the R., W. & O. I think that Norwood is shown as an R., W. & O. station.

Q. Rome, Watertown, & Ogdensburg?—A. Yes, sir.

Q. The Rome, Watertown, & Ogdensburg is the New York Central line?—A. It is part of the New York Central.

Q. I refer to that as part of the New York Central. Now, defendants' Exhibit 114–B is a division sheet, is it?—A. Defendants' Exhibit 114–B is a percentage sheet.

Q. What do you mean by a percentage sheet? You mean a division sheet, do you not, giving the percentages of each railroad in the sheet?—A. There is a difference between a percentage sheet and a division sheet.

Q. What is the difference?—A. The percentage sheet, as a rule, is the sheet that shows how the rate is to be divided. Technically, in many cases, a division sheet provides only for the division of some specific rate on the basis of the per cents.

Q. Many division sheets are made simply dividing the rate on percentages, are they not?—A. That is what I have just stated.

Q. Then, a division sheet which showed——A. The terms are hardly synonymous. They are synonymous very largely, but not entirely. A percentage sheet is such, pure and simple; a division sheet may not be a percentage sheet.

Q. That is, a division sheet might name the total amount to each road?—A. Yes, sir.

Q. And the percentage sheet would divide it up on a percentage?—A. Yes; it would give the percentage.

Q. But they are both made for dividing the rate over two lines, showing the amount each company gets?—A. They are made
10139 for the purpose of showing how the rate is divided and how the traffic should be routed.

Q. I believe you said that division sheets and percentage sheets were not usually filed with the Interstate Commerce Commission?

Mr. ROSENTHAL. That is what Mr. Crossland testified to in this case.

A. I testified that as a rule they were not, and Mr. Crossland corroborated that.

Q. I am not asking you what Mr. Crossland testified. I am asking what you said.—A. You asked me the question if division sheets or percentage sheets were filed, and you asked me about that sheet and I said I could not answer.

Q. Didn't Mr. Rosenthal ask you if division sheets were usually filed?

Mr. ROSENTHAL. No; I think not.

A. He asked me something about percentage sheets.

Q. Well, are they usually filed with the commission?—A. I said that I did not know, and that was an answer which you did not like. You thought I was evading. But Mr. Crossland's answer, later on, showed that I was justified in making that answer, for the reason that he stated, while there was no obligation on the railroad, still there were times when the railroads did file the division and percentage sheets, thereby showing that I was strictly correct when I answered your inquiry.

Q. Now, will you please tell me whether division sheets and percentage sheets are usually filed with the commission?—
10140 A. As a rule, usually, I should say no, but there are exceptions, and many of them.

Q. Now, what does this mean when this says "Not to be posted" [handing witness paper]?—A. Why, that means not to be posted.

Q. Posted where?—A. Posted in the station.

Q. It means that it is to be a private document for the use of the railroads, does it?—A. It does.

Q. Now, the shipper is not supposed to know anything about that division sheet, according to that?

Mr. ROSENTHAL. According to what? According to the phrase "Not to be posted?"

Mr. KELLOGG. Now, just wait a moment. Please answer my question.

A. The shipper has got plain notice on that tariff that he could not——

Q. Now, wait a moment. That is not the question. The shipper is not supposed to know anything about this, if it is not to be posted, is he?

Mr. ROSENTHAL. That does not follow.

A. The shipper could be very vitally interested in that.

Q. That is not the question. I asked if it is not to be posted, if the shipper is supposed to know anything about it, or if it is for the information of the railroad employes?—A. Not unless he finds a tariff that says a percentage sheet is necessary to use in connection with it.

Q. Then, why should it not be posted?—A. That is a matter that I could not undertake to answer.

Q. Posting the tariff is so that the shipper can know some-
10141 thing about it, isn't it?—A. I would not undertake to say what was in the mind of the Pennsylvania official when he put "Not to be posted" on a division sheet.

Q. What does that usually mean? You have had 30 years of experience, I believe you have testified. What does that usually mean?—A. I will answer that. It simply means with respect to a tariff, that the tariff to be posted was to be kept open in one file and

possibly kept in some open place, to comply with the rule of the Interstate Commerce Commission; but a State tariff with the words "Not to be posted" was just as accessible to the public, but that "Not to be posted" was put on to show the distinction between a State tariff and an interstate tariff.

Q. Then you think this "Not to be posted" was put on this Exhibit 114–B to show that it was a mere State tariff?—A. I can not conceive as a railroad man why the words "Not to be posted" should be put on a percentage sheet.

Q. But you said that it meant not to be posted in the stations.—A. I said with respect to the use of that notation on a tariff that the words "Not to be posted" were used to distinguish a State from an interstate tariff.

Q. And what do you say as to this on defendants' Exhibit 114–B?—A. I told you that I do not know why what was put on there, being a percentage sheet.

Q. Then this tariff says, "Route in accordance with agreed percentages and as designated within," on the outside of it. Is there any "designated within"——A. There is.

Q. On the tariff itself?—A. Very clearly.

10142 Q. Wait a moment until I finish my question. Is there any "Designated within" on the tariff itself, separate from the division sheet which is marked "Not to be posted," that would show the route the traffic was to take?—A. I will read from the tariff. On the third page, after quoting the rate from Olean to stations on the Boston & Albany Railroad, it says: "Route via Rochester, N. Y. C. & H. R. R. R. and West Albany." There is the answer to your question. Is there any specific routing instruction shown therein?

Q. Now, I am talking about Olean to Norwood.—A. You did not say so in your question.

Q. Very well. Is there on the face of that tariff, separate from that division sheet which is marked "Not to be posted," any direction as to how the traffic is to be routed from Olean to Norwood?—A. No, sir; it says you must consult the division sheet.

Q. Then, if the division sheet was not posted or filed with the Commission—as it was not—tell me how the shipper is to know about it.—A. Know about what?

Q. The division sheet, about the routing.

Mr. ROSENTHAL. That is the position we took in the Landis case, but Judge Landis said it was not good. With respect to posting, Judge Landis said you should inquire of the agent.

Mr. KELLOGG. I don't want your answer, Mr. Rosenthal. If you are on the witness stand I will cross-examine you.

Mr. ROSENTHAL. I am giving you the law as laid down by a distinguished jurist, who said that the proper interpretation of that law was for the shipper to go to the railway agent and

10143 inquire of the railway agent in good faith as to what the rate was.

Mr. KELLOGG. Now, will you please read my question and see if the witness will answer it?

WITNESS. The witness has not declined to answer any of your questions.

The following question was then read by the reporter: "Then, if the division sheet was not posted or filed with the Commission—as it was not—tell me how the shipper is to know about it."

A. The "Not to be posted" tariff, under the testimony of the man that issued that division sheet, was just as available in the Olean station as the tariff that was to be posted.

Q. Now, please answer my question. Is that the only answer you can make to it?

Mr. ROSENTHAL. I think it is a full and adequate answer.

A. I am giving you the truth as surrounds that situation, and I suppose that is what you want.

Q. Wait a moment. I want you to answer my question. If that division sheet was not posted and not filed with the Commission——

Mr. ROSENTHAL. May I suggest that you not stand right on top of the witness?

WITNESS. It doesn't make any difference to me.

Mr. ROSENTHAL. Well, I know, but it is not proper.

Mr. KELLOGG. When Mr. Rosenthal gets through I would like to repeat my question.

Q. If that division sheet was not posted in the stations and not filed with the Interstate Commerce Commission, tell me how
10144 the shipper was to find out how his traffic was to be routed?—A. But the testimony with respect to that division sheet——

Q. Wait a moment, please. Answer that question.

Mr. ROSENTHAL. Now, you answer that question in your own way.

WITNESS. But the testimony with respect to this particular transaction regarding which you are cross-examining me, as shown by several witnesses in the Rochester trial, was that the document with the words on it "Not to be posted" was filed in the same book with the tariff that had the I. C. C. number on it.

Q. Filed where?—A. In the book in the station.

Q. Was it filed with the Interstate Commerce Commission?—A. I must answer your question in piecemeal. I can not give you a yes or no answer to two different lines of questions, or two ideas in one question. We are talking now about being "posted." It was the uncontradicted testimony in the Rochester case that a tariff with the words "Not to be posted" on it was filed in the same rate-quoting binder that the tariff was filed that had the I. C. C. number on it. Consequently, the words "Not to be posted" was not a bar to the shipper in getting information.

Q. Filed where?—A. In the station. It was shown that those tariffs were in a book used by the agent at the station.

Q. Now you are talking about tariffs, are you? Was there any evidence in the Rochester case that this division sheet, 114–B, was

in the station among the tariffs of the Pennsylvania or New York Central road?—A. There was.

Q. Who gave the testimony?—A. Now, I say there was.
10145 There was a great deal of testimony there. As I recall it, the agent of the Pennsylvania road at Olean testified that he had the percentage sheet in his files and that he would have to use it in making a rate from that tariff before he could give either a rate or a route, at least, to the shipper. It is barely possible that that was not brought out so fully with regard to the percentage sheet, but I think it was.

Q. You were present at that trial, were you?—A. I was not in the court room all the time.

Q. Well, most of the time?—A. Part of the time.

Q. The record was that the division sheet was not filed with the Interstate Commerce Commission, was it?

Mr. ROSENTHAL. Why, that is our testimony here. There has never been any claim that it was.

Mr. KELLOGG. There is no claim that it was?

WITNESS. I do not claim it was filed.

Mr. ROSENTHAL. We proved that here, Mr. Kellogg, and I proved it by Mr. Schindler in Washington.

Q. Now, if the Pennsylvania road made a shipment from Olean to Norwood by way of Rochester, it could go through Rochester by two ways, couldn't it—one direct from Olean to Rochester and the other through Buffalo and then through Rochester to Norwood?—A. I have not the slightest idea what route the New York Central would use east of Buffalo.

Q. I say it could go through Rochester by both routes, couldn't it?—A. When you say "could," you carry with that word the idea that there was an obligation to take it through Rochester.

Q. I say it could go through on their tracks, through
10146 Rochester, by two routes, couldn't it?—A. It could not if the New York Central division sheet showed that the traffic had to go via Black Rock. I think the New York Central division sheet so read.

Q. Where is Black Rock?—A. Black Rock is a station on the R., W. & O. road beyond Buffalo, on the R., W. & O. route to Norwood, that doesn't go through Rochester.

Q. I can't see Black Rock. Please point it out to me.—A. I said on the New York Central division sheet.

Q. This is the division sheet between the two lines, isn't it?—A. That is the division sheet that would govern through unless the New York Central issued something that was to be used in connection with it.

Q. Do you know of any other division sheet of that rate?—A. There was a New York division sheet in the court room in the Rochester case.

Q. This is a division sheet between the New York Central and the Rome, Watertown & Ogdensburg road, the New York Central &

Hudson River road, and the Pennsylvania, isn't it?—A. But you are asking now about Black Rock. You have tried to force the traffic through Rochester, and I say no, it would not go through Rochester if the New York Central division sheet stated that it must go through Black Rock. Then I say that there was a New York Central division sheet in the Rochester trial that showed that Black Rock was the route to use.

Q. You have got no such in this trial, have you?—A. Well, we will get it if you want it.

Q. Well, why didn't you get it?—A. Make a note of that,
10147 Mr. Lown.

Mr. ROSENTHAL. Are you asking for it now?

WITNESS. If he wants it he can have it. My word is good as far as I am concerned.

Q. Now, Olean is almost south of Buffalo, is it not?—A. I would not say very much as to the geographical location of a station shown by a railroad map.

Q. I know, but it is nearly south of Buffalo, isn't it?—A. I should say that it was southwest of Buffalo.

Mr. ROSENTHAL. Southeast?

WITNESS. Southwest.

Q. Olean is southwest of Buffalo.—A. No; I was looking at Oil City there. I should say, apparently from this map, that Olean is somewhat southeast of Buffalo.

Q. Rochester is northeast of Olean, isn't it?

Mr. ROSENTHAL. You are looking now at an alleged railroad map in an alleged railway official guide?

Mr. KELLOGG. No; I am asking him for his recollection. I don't care for this map.

WITNESS. Generally speaking, that is correct.

Q. Now, there is a line of the New York Central road reaching from Buffalo almost direct to Rochester, isn't there?—A. Oh, without any question. The main line goes right through Rochester.

Q. And then from Rochester to Norwood?—A. There is a line shown here, if you wish me to testify to that——

Q. I am asking for your recollection of it, from Rochester to Norwood.—A. I am not going to testify to anything in regard
10148 to railroad maps or mileage from recollection.

Q. Don't you know that the New York Central has a line from Rochester to Norwood?—A. I know that the New York Central has a line running from Syracuse via Richland or some other junction that goes on to Norwood.

(Certain maps were referred to.)

WITNESS. I will answer your question without the map, Mr. Kellogg. Go ahead.

Q. The question is this: If there was not a line leading from Buffalo to Rochester and from Rochester to Norwood over the New York Central?—A. The New York Central and the R., W. & O.

combined have rails from Buffalo through Rochester and Syracuse up over some division of the R., W. & O., and finally reach Norwood.

Q. Now, isn't that the line over which freight shipped under that 26-cent tariff, according to your construction, would actually move?—A. No, sir.

Q. Why not? What is there in here to indicate that it would not?—A. I would rather not make any construction on that. I don't know what the New York Central would do after they would get those cars.

Q. Under the percentage sheet in evidence, defendants' Exhibit 114–B, and the 26½-cent tariff, is there anything in there which would prevent its going through Rochester?—A. Yes, sir.

Q. By Buffalo, I mean.—A. Oh.

Q. By Buffalo through Rochester.—A. I would like to see the other percentage sheet.

Q. There is no other percentage sheet in evidence, none
10149 that I know of.

Mr. ROSENTHAL. Oh, yes.

Mr. MARTYN. Yes; we put in another one.

Mr. KELLOGG. Where is it?

Mr. MARTYN. The one before that one.

WITNESS. Percentage sheet 221, as I recall the number of it.

Q. Is this the one, defendants' Exhibit 114–A? [Handing paper to witness.]—A. Percentage sheet 201, defendants' Exhibit 114–A, as I have already testified, applies the rate via Buffalo.

Q. And also Rochester, doesn't it?—A. No; it does not apply the rate via Rochester, not from Olean station.

Q. Is there anything to prevent it going through Rochester?—A. There is absolutely nothing in that percentage sheet that authorized the application of the rate through Rochester in the first instance.

Q. Is there anything that would prevent it going through Rochester by way of Buffalo?—A. After the New York Central got the car to Buffalo they could do anything they pleased with it.

Mr. MILLER. Mr. Felton, isn't the division of the R., W. & O. a division route rather than the route from Buffalo via Rochester, and wouldn't that run through Black Rock and along the south shore of Lake Ontario?

WITNESS. I wouldn't undertake to say what the New York Central would do with a carload of freight after they got it to Buffalo, but I do say that those exhibits you have just handed me do not apply the rate via Rochester in the first instance.

10150 Mr. ROSENTHAL. They do not apply it at all, do they?

WITNESS. They do not apply the rate via Rochester. They apply it via Buffalo.

Q. Now, the Standard Oil Company had this 26½-cent tariff, had it?—A. That was one of the stipulations made in the Rochester trial.

Q. That they did; that it was in their files?—A. Yes, sir.

Q. You understand that to be a fact, do you not?—A. Oh, we stipulated that.

Q. I mean it is a fact that the Standard Oil Company had this tariff?

Mr. ROSENTHAL. It may be taken here as a fact, for the purposes of this case.

Mr. KELLOGG. All right; that is all I want.

Q. Now, you say you were present at that trial?—A. Part of the time; I was not in the court room all the time.

Q. It is a fact that Judge Hazel decided, after hearing all the testimony that you refer to, that that 26½-cent tariff made a rate from Olean to Rochester and from Rochester to Norwood.

Mr. ROSENTHAL. Well, Judge Hazel has a motion for a new trial.

Q. Not through Buffalo; isn't that a fact?

Mr. ROSENTHAL. Judge Hazel has a motion for a new trial pending before him now in which that question is involved. He had not finally passed upon it.

Q. He passed upon it at the trial. Isn't that a fact?—A. I would like to have the question read.

10151 Mr. ROSENTHAL. District judges sometimes pass on things and circuit courts of appeal sometimes reverse them.

The following question was read: "It is a fact that Judge Hazel decided, after hearing all the testimony that you refer to, that that 26½-cent tariff made a rate from Olean to Rochester and from Rochester to Norwood, and not through Buffalo. Isn't that a fact?"

Mr. ROSENTHAL. I object to a lay witness undertaking to instruct the Circuit Court of the Eighth Circuit what the district judge of the New York district ruled in a case that was heretofore tried.

Mr. KELLOGG. Well, the witness has been telling so much about that trial I thought I would see.

Mr. ROSENTHAL. He has not undertaken to tell what any ruling of the court was. He has undertaken to state facts.

Q. On your examination the other day you produced a New York Central & Hudson River tariff from Buffalo to Norwood of 12 cents a hundred, marked Petitioner's Exhibit 928?—A. I did.

Q. Did you have any tariffs like that preceding it?—A. I could not say without investigating. It is 1904, Mr. Kellogg.

Q. No; September 29, 1905, is the date of this.—A. Well, I couldn't say without looking the matter up.

Q. Did you make any shipments under this tariff?—A. I don't know.

Q. You have never examined to see?—A. I have not.

Q. When you were looking this up, have you any recollection of any tariff preceding this, of the same kind?—A. You just

10152 asked me that, and I said that I do not recall; I do not know whether we had any tariff earlier than that or not. I might say I think yes or think not, but my best answer——

Q. I wish you would examine and see what tariffs of this kind you had earlier than that.—A. Mr. Martyn, will you make a note of that, please?

Q. And also whether any shipments were made under this tariff or the preceding one; and if so, what shipments and the destination thereof.—A. I used the words "first instance" in connection with your inquiry in regard to Rochester. I would like very much to be permitted to cut that out. That tariff and percentage sheet do not make a rate via Rochester.

Mr. ROSENTHAL. You mean that you wish to make your answer positive, without any limitation of "in the first instance?"

WITNESS. I wish to cut out the words "in the first instance."

Q. Now, this tariff, petitioner's Exhibit 928, also provides that it is not to be posted. You understand that was not posted in the stations of the New York Central road, do you?—A. I could not say what they did with it. Yes; down at the bottom it says "Not to be posted."

Mr. ROSENTHAL. Is it a State tariff?

WITNESS. It is a State tariff.

Q. Was it filed with the Interstate Commerce Commission?—A. I do not know.

Q. You never looked to see?—A. I did not.

Q. Never made any inquiry?—A. No, sir.

Q. You do not understand it was filed, do you?—A. I do not know.

10153 You don't know anything about it? What did you mean the other day when you said "Not to be posted" was to distinguish these tariffs from interstate tariffs?—A. Well, I thought I gave a good example and description of that by the Pennsylvania and other tariffs which I put in evidence, showing that prior to the Hepburn bill they were used on all kinds of business, but not posted or not filed with the Commission, and directly after the Hepburn bill came in they were amended by putting on an I. C. C. number.

Mr. ROSENTHAL. You mean the State tariffs?

WITNESS. Yes, sir.

Q. You refer to the rule of September 29th, 1906, that you read, which provided, in substance, that intrastate tariffs or rates when used for interstate shipments must be filed with the Commission?—A. I did not refer to any rule when I submitted that Pennsylvania tariff, as I recall; I submitted the tariff itself. It spoke for itself.

Q. Well, you did put in evidence a rule, didn't you?—A. In answer to my counsel, who asked if there was an Interstate Commerce Commission rule on that, I said there was, and, as I recall, referred to the document that gave it.

Q. That was a rule issued by the Commission September 29, 1906, was it? I show you your testimony.

Mr. MARTYN. The rule is in evidence.

Mr. ROSENTHAL. Show him the rule. We put it in as an exhibit, didn't we?

Mr. KELLOGG. You did.

Q. I show you the rule, defendants' Exhibit 115.—A. That

10154 tariff circular No. 4–A was put in as defendants' Exhibit 115.

Q. Which provides as follows: "All intrastate or other rates which are used in combination with interstate rates for interstate shipments must be posted and filed with the Commission and can only be changed as to such traffic in accordance with the act." Is that the part that you called attention to?—A. That and the first paragraph of the circular.

Q. Now, did you, in relation to that, testify: "Q. Prior to the issuance of that rule by the Commission, what was the general custom with respect to the use of unfiled State rates and the use of a combination of locals in the absence of a published through rate?—A. The custom was to use them." Did you testify to that?—A. If that is the way the testimony reads that is what I said.

Q. Then your inference was that after this rule went in force these local State rates were not to be used for interstate shipments without being filed with the Commission?—A. I put that in to show what the Commission ruled on that subject and when they ruled on it.

Mr. ROSENTHAL. The Commission is not the final arbiter of that question.

Q. Now, isn't it a fact that that rule has been in force ever since the Interstate Commerce Commission was organized?—A. I do not recall having seen anything previous.

Q. You don't? Then I will show you——A. Wait a minute. Let me have the exhibit, please.

(Paper handed witness.)

WITNESS. Now, before you proceed with that: Admitting
10154 it was, the Commission was silent, I imagine, for so many years that both the railroad and the shipper thought there was nothing to it, because the Commission says, in defendants' Exhibit 115: "In answer to numerous inquiries from railroad officials and other interested persons, and for the purpose of giving administrative construction to certain provisions of the amended act"—listen to that—"the amended act"—"to regulate commerce * * * announces the following rulings." That shows the state of uncertainty which existed prior to the time that the Commission issued Tariff Circular No. 4–A.

Q. Now, we will see about the silence of the Commission for many years. Did the Commission, on February 13, 1888, shortly after its organization, issue a circular as follows: "Interstate Commerce Commission, Auditor's Office, Washington, February 13, 1888. Roads located wholly in one State or Territory, which "——

Mr. ROSENTHAL. What are you reading from, Mr. Kellogg?

Mr. KELLOGG. I am reading from Interstate Commerce Commission. Requirements of the Act to Regulate Commerce in the Matter of Construction, Publication, and Filing of Rate Schedules.

Mr. ROSENTHAL. If you have such a circular, I submit that the circular is the best evidence.

Mr. KELLOGG. I will show him the circular.

Mr. ROSENTHAL. The circular is the best evidence of its having been issued.

Mr. KELLOGG (reading). "Roads located wholly in one State or Territory which interchange freight or passenger traffic with
10156 connections to or from points outside of such State or Territory on through tickets or bills of lading should file tariffs covering such traffic with the Commission.

"If such through rates are made by the addition of local rates to the rates of connecting roads, such local tariffs should be filed with the Commission, together with a statement that through interstate rates are made by adding such local rates to the rates of the carrier (naming it) with which connection is made.

"If joint rates are made on any basis other than by the addition of the local rates to the through rates of connecting carriers, tariffs showing such rates should be filed with the Commission covering all interstate business transacted thereunder.

"For the Commission:

"C. C. MCCAIN, *Auditor.*"

Was that rule issued?

Mr. MILLER. I object to that as incompetent. The witness can not know whether the Interstate Commerce Commission issued that rule.

A. I have heard what you read, but I don't know anything about it.

Q. You do not know anything about it?—A. No, sir. If that was issued by the Commission, unqualified by anything else in the pamphlet, they were silent a great many years on the subject.

Q. Well, we will see about that. I show you a decision of the Interstate Commerce Commission, decided April 12, 1899.

Mr. ROSENTHAL. Did you read that phrase there concerning through bills of lading?

10157 Mr. KELLOGG. I have read it verbatim, as it was given.

Mr. MILLER. It is limited, is it not, Mr. Kellogg, to cases where the traffic is on through tickets or through bills of lading?

WITNESS. That is what I say. That should be studied carefully. There may be some qualifying feature there.

Mr. ROSENTHAL. A great many cases have been before the Commission where that particular question was involved.

Mr. KELLOGG. You do not deny the authenticity of the document, do you, Mr. Rosenthal? If you do I will get a certified copy from the Commission.

Mr. ROSENTHAL. No; I do not deny the authenticity of the document which Mr. Kellogg has in his possession, which purports to be issued by the Interstate Commerce Commission; certainly not.

Mr. KELLOGG. Then, I read in evidence from the document the clause which I read before, if you will please compare it, Mr. Reporter, and see that it was correctly read.

Q. Now, you say the Commission were silent a great many years. I show you a decision of the Interstate Commerce Commission, published in the regular reports of the Interstate Commerce Commission at page 185, of Volume VIII, decided April 12, 1899, in which, among other things, I find the following:

Mr. ROSENTHAL. Why not refer to the decision? What is the title of the case?

Mr. KELLOGG. The title of the case is: "In the Matter of Export Rates from Points East and West of the Mississippi River," the closing sentence of which is as follows: This was decided
10158 April 12, 1899. I would like to offer in evidence as part of this cross-examination so much of the decision as is contained in the last clause, and counsel can refer to any part of it.

Mr. ROSENTHAL. I do not understand you have to put a decision of the Interstate Commerce Commission in evidence in order to refer to it.

Mr. KELLOGG. I do not understand that the rules have to be either, Mr. Rosenthal. The court takes judicial knowledge of all their decisions and rulings.

Mr. ROSENTHAL. But a rule may not be published in book form.

Mr. KELLOGG. They are all published sooner or later.

Mr. ROSENTHAL. But decisions are referred to just as the decisions of the courts are referred to.

Mr. MILLER. I think it would be convenient, however, to have it.

Mr. KELLOGG. It is just a short clause.

Mr. ROSENTHAL. I have no objection to it.

Mr. MILLER. Read the reference. Either side can refer to the report, can't they?

Mr. ROSENTHAL. Before we pass this, Mr. Kellogg, this ruling of February 13, 1888, that you read into the record a moment ago, is found in a publication of the Interstate Commerce Commission, published by the Government Printing Office at Washington in the year 1906, is it not?

Mr. KELLOGG. I will get the original publication, when it was published.

Mr. ROSENTHAL. It purports to be a reissue of something, but the book from which you read appears to have been published in the year 1906.

10159 Mr. KELLOGG. Yes, but I will get the original. It was published shortly after the commission was organized. Now, the closing part of this decision is as follows:

"When rates established to apply between points within a single State are applied as part of combination rates on transportation through different States, such State rates, as well as the interstate rates with which they are combined, must be published at stations and filed with this Commission as provided in section 6 of the act to regulate commerce."

Mr. ROSENTHAL. Were those shipments on through bills of lading?

Mr. KELLOGG. It says nothing about through bills of lading whatever.

Mr. ROSENTHAL. I mean the statement of the facts.

Mr. MILLER. The case itself concerned export rates, did it not, or rates to the seaboard on exportations? That is, the property was on its way abroad, and they had to do with that subject-matter.

Mr. KELLOGG. Yes, but it does not make any difference whether it was going out of the country or going from State to State. It is the same clause of the Constitution that makes it interstate commerce.

Q. Now, that was in 1899. Are you familiar with that?—A. I never heard of it before.

Q. Never heard of that?—A. No, sir.

Q. Do you know of a decision of the Commission, or a rule of the Commission, or of any court, that ever permitted a State rate
10160 to be used for a part of a through shipment without its being filed with the Commission?—A. I have never made any investigation along that line.

Q. Then why did you investigate this rule that was made in 1906 without investigating the rest?—A. Because it was the only rule of the kind that I knew of issued as a matter of instructions by the Commission, that was generally distributed among the railroads and the shippers.

Mr. ROSENTHAL. And because the fact that they issued it at that time emphasized the necessity of their so doing?

A. Well, it refers—as I called Mr. Kellogg's attention—it refers to the amended act, and as it was issued after the Hepburn law I assumed that it applied to that law when I spoke of the amended act.

Q. Now, during the time this tariff of 12 cents per hundred from Buffalo to Norwood was in force, and before, there was a rate over the Pennsylvania Railroad of 10 cents per barrel from Olean to Buffalo, the State rate heretofore testified to in this case? (Handing witness paper.)—A. This document which you hand me purports to name a rate of 9 cents a barrel from Olean to Rochester.

Q. You mean 10 cents a barrel from Olean to Buffalo?—A. You spoke of 9 cents.

Q. No, I spoke of a 10 cent a barrel rate from Olean to Buffalo.—A. It names a rate of 10 cents a barrel from Olean to Buffalo; yes, sir.

Q. And 9 cents a barrel from Olean to Rochester?—A. And 9 cents a barrel from Olean to Rochester.

Q. And petitioner's Exhibit 608, being several tariff sheets, and similar tariffs were in force up to 1906?—A. Yes, sir.

10161 Q. Each one of these tariffs was marked "Not to be posted," was it not?—A. The copies you have there so read.

Q. None of them were filed with the Interstate Commerce Commission?—A. I don't know.

Q. Weren't you present at that trial where it was testified they were not?

Mr. ROSENTHAL. I object to that. It assumes that such was the testimony. There isn't any proof of it.

A. It may be that the testimony indicates that, but I do not recall that that particular fact was brought out. It may have been.

Q. You have no understanding that these rate orders were filed with the Commission, have you?

Mr. ROSENTHAL. I object to that. It is wholly immaterial what his understanding is. The question is one of fact.

A. I could not say whether they were filed or not.

Q. You never made any inquiry at all?—A. The rate had been in force so many years that I never saw a rate sheet on that until three or four years ago.

Q. You never made any inquiries as to whether it had been in force or not?—A. That rate had been in force for 25 years.

Q. Where is your tariff for it?—A. I was informed by Division Freight Agent Johnson——

Q. Now, wait a moment. I want to know your knowledge. Do you know it had been in force 25 years?—A. No, because I was not doing business there 25 years ago.

Q. You don't know anything about it?—A. Only what the old Western New York & Pennsylvania people told me, and when
10162 I made inquiry in my own office about that rate they said, "Why, that rate has been in force so many years we haven't got any record of it."

Q. Oh, they did? Then your own office had these tariffs, had they?—A. They said they had no record of it.

Q. No record of it? That is what they told you in your office?—A. Yes, sir.

Q. Did they tell you that it had been filed with the Commission?—A. Well, not having any record of the rate, they necessarily did not know whether it was filed or not. That rate has been so long that the memory of man runneth not to the contrary.

Q. Do you know it has?—A. Only what I have been told.

Q. Just what you have been told. Please stick to what you know.

Mr. ROSENTHAL. He doesn't go back more than one hundred and seven years himself.

A. I know Chicago is a pretty old city, but I have only lived here since 1882.

Q. The rate from Olean to Buffalo, being 10 cents a barrel, is how much a hundred?—A. About 3 cents a hundred.

Q. And from Olean to Rochester, being 9 cents a barrel, is how much a hundred?—A. That figured out 2.8 cents, as I recall it.

Q. Now, adding that 3 cents from Olean to Buffalo to the 12 cents named in tariff petitioner's Exhibit 928, made a 15-cent rate by the Pennsylvania Railroad and the New York Central from Olean to Norwood, by the way of Buffalo, did it?—A. That combination would figure about 15 cents.

Q. Will you tell me why the Pennsylvania Railroad was making and filing a published tariff rate of 26½ cents at the same
10163 time if they had such a rate as that in force?

Mr. ROSENTHAL. I would say you would have to ask the Pennsylvania road about that.

Mr. KELLOGG. Well, I am asking him.

A. I can tell you, if you will permit me to say what Mr. Johnson said.

Q. No; I am asking you what you know.

Mr. ROSENTHAL. If that answers his question, tell him.

WITNESS. If you let me tell you what Johnson said, I will.

Mr. ROSENTHAL. Go ahead.

WITNESS. Johnson told me that that tariff was issued to take care of those R. W. & O. stations on purely local business.

Q. Why wasn't it confined to that, then?

Mr. ROSENTHAL. Now, wait.

WITNESS. And was only filed with the Interstate Commerce Commission because as a matter of economy a rate clerk slipped those New York State towns into that sheet, and that he never intended to file that with the Commission as a means of declaring to the Commission that that rate was to be applied on interstate traffic.

Q. And yet the tariff names rates to a large number of places in New York, from Olean to places in New York, and was filed with the Interstate Commerce Commission?—A. Yes; but only filed with the Commission to declare the interstate rates.

Q. But it was filed with the Commission?—A. Now, don't slip away from the position in which you have gotten yourself.

10164 Q. Well, why were those rates put in there, then?—A. As a matter of economy, he said. It was a little poor division of a road, and as a matter of economy, as I have already testified, rates were issued in the manner that seemed to be for the best in the matter of economy and dispatch, and he tells me that those stations were put in there as a matter of economy.

Q. Why, then, did they put in the 26½-cent rate from Olean to Norwood if they had a rate of 15 cents in existence at the same time?—A. They did not have a rate of 15 cents in existence. The 15 cents that you have figured out took their local to Buffalo and the New York Central local from Buffalo to Norwood, that the Pennsylvania people did not know anything about, and there is where I the Government is dead wrong in trying to saddle on us the 26½-c rate from Olean to Norwood, when it has got in its own possession the information that shows that the combination of the locals was 15 cents.

Q. You say the Pennsylvania did not know anything about this secret rate of the New York Central?

Mr. ROSENTHAL. He hasn't said it was a secret rate; it was a State rate.

Q. So at that time the Pennsylvania did not know anything about this rate?—A. I say the Pennsylvania road—I don't know just what I did say there.

Q. You had better find out.—A. That is just the condition.

Mr. ROSENTHAL. You haven't said anything about that at all.

WITNESS. And we were not able to get it in in the Rochester case.

Q. What do you mean by saying that the Pennsylvania did not know anything about this 12-cent rate from Buffalo to Nor-

10165 wood?—A. Let me see what I said there.

Mr. KELLOGG. Read it over to the witness.

The following portion of the witness's answer was read by the reporter: "They did not have a rate of 15 cents in existence. The 15 cents that you have figured out took their local to Buffalo and the New York Central local from Buffalo to Norwood, that the Pennsylvania people did not know anything about, and there is where I claim the Government is dead wrong——"

WITNESS. I will change that to "may not have known anything about it." I don't know whether they knew anything about it or not.

Q. You think they may not have known anything about it?—A. I think very likely they may not have known anything about it.

Q. And that would explain why the Pennsylvania put in this other tariff, would it, to Norwood?—A. Which other tariff?

Q. The 26½-cent rate?—A. Johnson told me—and you have allowed me to testify on what he said—that that 26½-cent rate was put in to those upper R. W. & O. stations and happened to include Norwood.

Q. Now, just wait a moment.—A. But was never intended to apply to Norwood on through business. The idea of trying to force on us a 26½-cent rate from Olean to Norwood to be used on business to Rutland, when their tariff named a rate to Rutland, by another road, of 19 cents, is the most ridiculous rate proposition that was ever put up.

Q. Now, wait a moment. You say the Pennsylvania may not have known of this rate. The New York Central certainly
10166 knew of it, didn't they?—A. I don't know whether the New York Central knew of the rate from Olean to Buffalo.

Q. The New York Central knew of the 12-cent rate it issued from Buffalo to Norwood, didn't it?—A. It did.

Q. And it joined in this tariff of 26 cents, didn't it?—A. Well, there is no connection between those two in that way.

Mr. ROSENTHAL. A ridiculous rate situation doesn't fease the Government in this case at all.

Q. Now, when this oil got to Norwood, you shipped it under a published and filed tariff to Burlington, a carload tariff, did you not? I show you defendants' Exhibit 120.—A. This is not a tariff; this is not an exhibit showing the tariff.

Q. Did I give you the wrong one?—A. I think you gave me the wrong one.

Q. Oh, no; I did not. Under the second subdivision, from Norwood to Burlington $23 a car, to Bellows Falls $28, and to Rutland $30.—A. There is an exhibit in somewhere, either by you or by us, that covers that by a tariff. I think that is what you refer to.

Mr. ROSENTHAL. It is an exhibit put in by the Government, and we have adopted their proof in so far as the making up of that exhibit is concerned.

Q. You made that exhibit, did you?—A. It was made under my instructions.

Mr. ROSENTHAL. We vouch for its accuracy.

Q. Now, you have made several criticisms of the exhibits
10167 made by Mr. Schindler as to their accuracy as to rates and distances. I suppose you were very careful in making up yours to have them correct?—A. I should not be surprised if you would find a few errors in mine.

Q. Well, how many?—A. Oh, I hope they are accurate, but there may be some errors.

Q. Errors are liable to occur I suppose in making up a schedule?—A. Yes; unless they get too numerous, as Schindler's were.

Q. Now, I ask you if the rates stated on that exhibit (defendants' Exhibit 120) are accurate. I show you the original tariff of the Rutland Railroad, showing the rates from Norwood to Burlington, to Rutland, and to Bellows Falls, a copy of which was put in evidence in this case.

Mr. ROSENTHAL. Mr. Martyn says that perhaps Bellows Falls and Rutland have been typographically introduced one for the other. If that is true, it does not change the principle of the exhibit or the net result of the exhibit.

Q. The rates stated in your Exhibit 120 are not correct, are they? Please state in what way they are incorrect.

Mr. ROSENTHAL. The rates are entirely accurate. Bellows Falls ought to be where Rutland is, and Rutland ought to be where Bellows Falls is, that is all.

A. There seems to be an error made by the stenographer in copying the figures onto the record.

Q. Well, you testify. Down below here you have got a table.

Mr. ROSENTHAL. The net figures are accurate. The principle established by the exhibit is not changed one whit by the
10168 changing about of those two towns.

Mr. KELLOGG. There are lots more inaccuracies, Mr. Rosenthal.

WITNESS. There seems to be a transposition of figures there.

Q. Now, the rate from Norwood to Rutland is $28 a car, instead of $30 as you have it in the exhibit, is it?—A. The rate shown on the tariff from Norwood to Rutland is $28 a car. The stenographer who copied that record seems to have made an error and transposed Bellows Falls for Rutland. The rates are correct.

Q. The accurate rate is $28 a car from Norwood to Rutland, isn't it?—A. That is so shown on the tariff; yes, sir.

Q. And to Bellows Falls $30 a car. Now, you have made up several tables based on your Exhibit 120, haven't you?—A. I could not say, without checking them further, whether that error was limited to that exhibit or whether it has been carried through the others.

Mr. DURAND. It has been carried through.

WITNESS. Has it? We will have to amend our exhibits, then. May I see that again, please? [After referring to defendant's Exhibit 120.] It is only a fraction of a cent.

Mr. ROSENTHAL. It is $\frac{3}{10}$ of a cent?

WITNESS. $\frac{3}{10}$ of a cent difference.

Q. Well, the rate itself is only from 4 to 5 cents, is it not?—A. That is right.

Q. The whole rate?—A. That is right.

Q. That is based on an average of five years' shipments?—A. Yes.

10169 Q. Now, according to those rates, including the rate from Olean to Rochester, from Rochester to Norwood, and Norwood to Burlington, you shipped oil from Olean to Burlington for 15.8 cents a hundred?—A. That is the way that combination works out; yes, sir.

Q. Now, during that same time the rate from Bradford, Oil City, and Pittsburg to Burlington, according to your exhibits, was 33 cents a hundred, was it not?

Mr. ROSENTHAL. Show him the exhibits.

A. Never mind. I put in one tariff, as I recall—I am speaking now of one, the Buffalo, Rochester & Pittsburg tariff—that made a rate up into that country of 33 cents less than carloads.

Q. Well, that was the carload rate, too, wasn't it?—A. It was available to carload shipments.

Q. So that the lowest carload rate from Bradford, Oil City, and Pittsburg to Burlington during that same time was 33 cents a hundred, wasn't it?—A. I have not so testified.

Q. Well, it was, wasn't it?—A. I do not know.

Q. You don't know of anything lower, do you? That was the only rate you gave, wasn't it?—A. No; I don't know now. Pittsburg has not come into this game at all. Pittsburg has not been mentioned anywhere along the line.

Q. Well, Bradford and Oil City; you named those two, didn't you?—A. I would have to look over the corrections I made to your exhibit to see what the rates were from Oil City.

Q. Well, Bradford, then, had a rate of 33 cents?—A. Part of the time I showed that Bradford had a L. C. L. rate of 33 cents.

10170 Q. And the carload rate the same—available for carloads?—A. Yes; but you must be frank enough to admit the benefit of an L. C. L. rate. A man could ship one barrel of oil at 33 cents a hundred from Bradford.

Q. The lowest rate you know if was 33 cents a hundred, from Bradford, wasn't it? Do you know of any lower?—A. The exhibits that we have put in will indicate whether there was anything lower.

Q. Do you know of any?—A. I am not going to try to carry all those exhibits in my head.

Mr. ROSENTHAL. Mr. Kellogg, before we get away too far from the matter, in the Export Rate case that you read from, in volume 8 of the Interstate Commerce Commission, I should like to call the attention of the court to the sentence immediately preceding the sentence which you read——

Mr. KELLOGG. I have not the slightest objection, sir.

Mr. ROSENTHAL.——and which entirely changes the sense and effect of what you read.

Mr. KELLOGG. I have not the slightest objection to the whole being in evidence.

Mr. ROSENTHAL. Of course not, but you seem to omit reading it yourself. The rest of the paragraph preceding the last sentence which you read, reads as follows, on page 213 of volume 8: "It is found in this case that various carriers engaged in the carriage of corn at combination rates from Illinois points to the seaboard had not filed with the Commission the local rates in
10171 Illinois which they apply on that traffic in connection with through rates from Chicago or other market cities in Illinois, and special request had to be made by the Commission for such rates before we could determine what rates were actually in effect from such originating points in Illinois to the seaboard. A similar practice of not filing State rates with the Commission is followed by carriers in other parts of the country."

And then follows the sentence which you read, which was the last sentence of that paragraph.

WITNESS. Then I was justified in my testimony.

Mr. ROSENTHAL. Entirely so, by the statement of the Interstate Commerce Commission.

Q. Now, are you through with that? That was nine years ago, wasn't it?

Mr. ROSENTHAL. That was volume 8, 1901.

Q. 1899.

Mr. ROSENTHAL. Volume 8 runs from May, 1898, to 1901.

Mr. KELLOGG. That decision was made April 12, 1899.

Mr. MILLER. There was never one of them prosecuted for not filing those State tariffs under the Elkins bill.

WITNESS. Does not that completely confirm the statement that I made in the opening of this case several days ago, that it was not the practice of railroads to file State rates?

Q. It does not confirm your statement that there was no ruling prior to 1906, does it?—A. I will get to that later. I am talking about the statement that I made in answer to my counsel's question——

Q. You answer the questions——A. ——as to what was done as a general thing. Now, here is a decision from the Interstate
10172 Commerce Commission that admits it.

Q. And they put a stop to it in 1899?

Mr. ROSENTHAL. Oh, no, no, evidently they did not, because they found it necessary to issue the rule again in 1906.

WITNESS. That is just it, exactly.

Mr. KELLOGG. Yes; all these State rates that you have been using came to light.

Mr. MILLER. Under the Hepburn Act, which expressly requires it.

WITNESS. I feel very much pleased that you turn in that decision, because I have the authority of the Interstate Commerce Commission of the United States in support of the general statement that I made in the opening of this case.

Mr. KELLOGG. Now, I object to your reading lectures here. If you will just answer my questions, Mr. Felton—of course I do not suppose you will observe the proprieties, but I suggest that you answer my questions.

Mr. ROSENTHAL. Well, let us have a mutuality of the observance of proprieties, and we will get along splendidly.

Q. Now, according to your exhibits, 131–A and 122, the rates from Oil City and from Bradford to Burlington were 33 cents?—A. Exhibit 122 and Exhibit 131–A show 33 cents.

Q. You understand those to be correct, don't you?—A. I do, but I could not answer——

Q. So that——

Mr. ROSENTHAL. Answer what?

WITNESS. He asked me a question, and I simply ask him to let me see the exhibit.

10173 Q. So that during the time the Standard Oil Company had a rate from Olean to Burlington of 15.8 cents a hundred—— A. In carloads.

Q. In carloads, the independents who shipped carloads had to pay 33 cents a hundred?

Mr. ROSENTHAL. Not at all.

Mr. KELLOGG. Yes, they did.

Mr. ROSENTHAL. Not at all.

Q. Isn't that correct, Mr. Felton?—A. I show on these exhibits a 33-cent rate, less than carloads, from Bradford.

Q. That was applicable to carloads, too, wasn't it?—A. It was.

Q. Well, then——

Mr. ROSENTHAL. You show something else.

Q. And in your Exhibit 131 you show it in carloads, too, don't you?—A. Unless I consult the data on which that was made, it is my recollection that that 33-cent rate from Oil City was a less than carload rate. I may be wrong about it, but I——

Q. But you say the carload rate was the same as the less than carload rate?—A. The less than carload rate was applicable to carload shipments.

Q. Now, you have testified, on page 9709 of the testimony, as follows: "Q. So your understanding is that the 9-cent rate between Olean and Rochester was practically an interrefinery rate?—A. That is my understanding." You do not mean by that, do you, Mr.

10174 Felton, that a large amount of traffic was not shipped to Vermont on that rate?—A. We have put in an exhibit that shows about 3 per cent was shipped to Vermont on that rate, or 6 per cent, I have forgotten which. If you will let me have the exhibit I will answer the question in detail.

Q. I notice here on Exhibit 117, in the year 1903, 254 cars; in the year 1904, 229 cars; in the year 1905, 143 cars, or 626 cars shipped to points beyond Rochester in New England.

Mr. ROSENTHAL. Which was 6 per cent of the total traffic.

A. 626 cars out of something over 10,000 cars.

Q. 626 cars. Now, you say that is a small amount of shipment, Mr. Felton, 626 cars into New England?

Mr. ROSENTHAL. He said that was 6 per cent of the total shipment made by the Standard Oil Company from Rochester.

Q. Yes. Isn't it a fact that the 254 cars shipped from Olean to New England points in 1903 is more than all your shipments from all points into Vermont for a year?

Mr. ROSENTHAL. From all other points than Olean.

Q. Including Olean.

Mr. ROSENTHAL. I do not understand your question.

WITNESS. I do not know.

Q. Take the year 1904. What were your total shipments into Vermont?—A. In the year 1904 the total shipments into Vermont are shown on defendants' Exhibit 116 as being 238 cars.

Q. That is correct, is it?—A. That statement is a statement that I will have to vouch for, as it was prepared under my instructions.

Q. And this statement shows you shipped 254 cars from Olean on this low rate into Vermont or other New England points that same year?

10175 Mr. ROSENTHAL. No; the preceding year.

Q. Well, the preceding year, then. I think it was the same year.—A. There does not seem to be any argument at all on this, if you please, Mr. Kellogg. Exhibit 116 shows a comparison between Olean and other points.

Mr. ROSENTHAL. That is, defendants' Exhibit 116 disclosed those very facts?

WITNESS. Yes, sir; tells the whole story right off.

Q. In other words, you shipped from Olean, during those years 1903 and 1904, substantially as much as the Standard Oil Company shipped into all Vermont points together?—A. Whatever that exhibit shows are the figures.

Mr. ROSENTHAL. That is, shipped into New England.

Q. Now, you shipped during those four years to other points in New York beyond Rochester 2,358 cars, didn't you?

Mr. ROSENTHAL. Wait a minute. Let us see, Mr. Kellogg, your exhibit there that you refer to, if you please.

(Counsel for petitioner, counsel for defendants, and the witness consulted together.)

Q. There is evidently an error in your Exhibit 116.

Mr. MARTYN. It should be to Burlington, Vermont.

Mr. ROSENTHAL. It is not an error. It was not corrected according to our copies, that is all.

WITNESS. I thought those figures looked very small when I looked at them.

Q. Then that Exhibit 116 should read "Comparative statement of shipments," and instead of the words "into Vermont territory," it should read "to Burlington, for the years 1904 and 1905."

10176 Do you understand that to be correct, "to Burlington?"—A. Why, I will have to consult the data on which those were prepared.

Q. All right. I would like to know if it is correct or not.—A. There is an error, whether it is a stenographic error or a clerical error.

Q. Your counsel says it should be Burlington. Let it be written on the face of the statement "to Burlington."

(Mr. Martyn made the change in the exhibit as above indicated.)

Q. Now, you understand, do you, that these shipments shown on Exhibit 117 to New England via Rochester were shipped direct through in carloads from Olean to Burlington or other New England points?—A. I understand those cars were consigned through.

Mr. ROSENTHAL. Whether they were on a through bill of lading or not, you do not know?

WITNESS. I understand that they were not on a through bill of lading.

Q. They were consigned directly through to Vermont points?—A. Yes, sir.

Q. The only instructions that the Standard Oil Company gave were to ship them through from Olean to Burlington or other Vermont points, weren't they?—A. The shipments were made by the Vacuum Oil Company.

Q. I mean the Vacuum Oil Company.—A. Yes, sir.

Q. That is correct, is it?—A. Consigned through.

Q. And petitioner's Exhibit 611 A, which I show you, was the Vacuum Oil Company's instructions for such shipments, was
10177 it?—A. I understand that is a Vacuum Oil Company shipping ticket.

Q. And all those shipments that you refer to were shipped under similar shipping instructions?

Mr. ROSENTHAL. Do you know anything about that?

Mr. KELLOGG. He was present when this case was tried.

Mr. ROSENTHAL. Why, you have got the proof in evidence here in this record already. You put it in in Washington. We have not contradicted it at all, but Mr. Felton does not know a thing on earth about it.

Q. You were present when these were put in in Rochester—all of these—we only put in one of them.

Mr. ROSENTHAL. You put in one, but either Mr. Schindler or Mr. Durand testified at Washington that the others were all shipped on similar instructions.

Mr. KELLOGG. There is no claim that they were not?

Mr. ROSENTHAL. Not so far as we are concerned in this case; no, sir.

Q. Now, you testified the other day the reason railroads have for blind-billing shipments. As I understood you, you said the only reason would be economy in accounting, or to prevent a competitive railway from knowing the rate.—A. I gave those as reasons.

Q. Are those the only reasons you now can think of?—A. I do not see any other—I do not recall any other reason for that method of billing.

Q. Now, if the tariffs were filed with the Interstate Commerce Commission, the blind billing would not keep the rate from the competitive railroad, would it?

10178 Mr. ROSENTHAL. There are a hundred thousand tariffs filed with the Interstate Commerce Commission that never see the light of day.

Q. Please answer the question.—A. A shipper going to the Interstate Commerce Commission could ascertain any rate.

Q. No, I am not talking about the shipper. I say if the rate was filed with the Interstate Commerce Commission the fact that the goods were blind billed by the railroad company would not keep the knowledge of the rate from the competitive railroad.

Mr. ROSENTHAL. It would not necessarily.

A. I was going to use that very word—not necessarily—if they wish to apply to the Commission for the rate, for the information. Let me make that clearer—not necessarily.

Q. Each traffic association that you have been talking about, each railroad traffic association, has an employé in Washington in the office of the Interstate Commerce Commission to get all tariffs filed by the railroads, has it not?—A. I understand that there is some one there or they have some means of getting information of that kind when they desire it.

Q. And many of the railroads also have employés there for the same purpose?—A. I so understand; yes, sir.

Mr. ROSENTHAL. Yes; that is the practice.

Q. Now, blind billing would also tend to keep the information of the rate from a large number of the employés of the railroad, wouldn't it?—A. I should think that it would be a red flag calling their attention to the fact that something was secret.

Q. Why?—A. Why, the fact that the rate was omitted. I should think, so far as the employés of that particular road were

10179 concerned, would be a notice to them that there might possibly be a secret rate; not necessarily, but there might possibly be one.

Q. That there was something wrong about it?—A. Yes; it could be construed that way.

Q. Now, tell me what object the Standard Oil or the Vacuum Oil Company would have in directing the railroad agent to blind bill to Rochester, New York.—A. May I answer that question?

Q. Yes, sir; that is what I asked it for.—A. In my own way?

Mr. ROSENTHAL. Sure.

Q. That is what I asked you.—A. My answer to that is this: Instructions, as you call it, to blind bill, put on a shipping ticket by a shipper, would have absolutely no weight with the railroad agent unless he had previously been advised or instructed by his superior officer to blind bill. Mr. Johnson told me that——

Q. Now, testify to what you know.

Mr. ROSENTHAL. You go right ahead.

A. I asked you if I could answer that in my own way. Now, I am giving you the truth of it. Let it come out. Mr. Johnson tells me that he put those instructions in as a matter of convenience, and then the Vacuum, knowing in some way that the stuff was blind billed, put that stamp on there, meaning for them that it was to be prepaid, through general office settlement, and that is the only significance that the words "blind billing" had to the Vacuum people.

Q. Now, this reads "Agent Olean, New York, blind bill to Rochester, New York." If the railroad company had already
10180 given instructions to its agent to blind bill, why should the Standard Oil give the instructions again?

Mr. ROSENTHAL. He has just answered it.

Q. Will you please answer that, then?—A. I say that originally the instructions were put in by the railroad, and then as a matter of convenience as between the railroad agent and the old shipping clerk of the Vacuum Oil Company, the Vacuum Oil Company put that stamp on the shipping ticket; but in the mind of the Vacuum Oil people (and I am speaking historically now) the only significance the term "blind billing" had was to prepay it.

Q. Prepay where?—A. Prepay as far as the rate went.

Q. Where to—to Rochester, you mean?—A. In that case that prepaid to Rochester; yes, sir.

Q. But they did not prepay to Rochester, they settled through the auditor's office, didn't they?—A. Let me have—there is something else on there, I think. Let me have the sheet.

Q. No. They did not prepay, did they, from Olean to Rochester?

Mr. ROSENTHAL. You are under no obligation to answer without the document before you.

A. If you are going to ask me to answer questions——

Q. I am asking if as a matter of fact the Vacuum Oil Company prepaid the shipment from Olean to Rochester?—A. The collections were made, as I recall it, through the Standard Oil Company, 26 Broadway.

Q. Yes; by bills of each two weeks' shipments?—A. I do not know as to that; but let me have that ticket there.

10181 Q. Now, were not the directions to prepay from Rochester beyond, instead of from Olean to Rochester?—A. I told you I wanted to look at the ticket. [Paper handed to witness.] That is all easily explained.

Q. The directions were to prepay from Rochester on, weren't they?—A. As long as I am going to answer, let me have this before me, because I do not carry all this stuff in my head.

Q. Certainly.—A. This billing ticket shows that the agent at Olean was to blind bill to Rochester. There is another notation on it, "Agent, Rochester, New York, prepay through to Norwood and charge to Standard Oil Company, New York."

Q. That is it?—A. Now, that speaks for itself.

Q. There are no instruction there to prepay from Olean to Rochester, are there?—A. No; but as I say, they told me that the term, that the expression to blind bill, in their minds, was synonymous with the word "prepay."

Q. As a matter of fact, the instructions to prepay are right on this slip, in addition to those words?—A. The first question you asked me was in regard to what blind billing meant, and I told you that the term "blind billing," so far as the Vacuum Oil Company was concerned (and the term "blind billing" only carries the shipment to Rochester), was synonymous with prepaying.

Q. When freight is prepaid is it usually sent blind billed?—A. Not necessarily.

Q. It is not usually, is it?—A. I will carry that further and say not usually. But I have said to you——

Q. As a usual thing——

10182 Mr. ROSENTHAL. Wait a minute.

WITNESS. I have explained to you how those terms grew up——

Q. Yes; I understand perfectly.—A. That blind billing with the railroad and blind billing with the (Vacuum was synonymous with prepaying.

Q. Now, let us see about that. In nearly all railroad shipments general freight is prepaid to the agent taking the freight, isn't it? That is the general custom throughout the country?—A. Well, it developed in the Rochester case (and we are talking about that now) from the testimony of some of the Government witnesses whom we afterwards cross-examined, that there was quite a large volume of traffic that was not only billed prepaid, but also blind billed. My own experience in regard to those two systems of billing is limited, but it came out very clearly there.

Q. Where do you refer to any testimony such as that in the Rochester case? Please point it out.—A. You will find it in the testimony of Mr. McCullough, the auditor of disbursements of the New York Central road.

Q. All right, I will look for that. Now, generally speaking, freight is prepaid, isn't it, and the waybill shows the amount paid?—A. Generally speaking, freight is not prepaid. Generally speaking, freight charges follow.

Q. It is either prepaid or follows the freight, I should have said.

Mr. ROSENTHAL. Why, of course.

Q. And the waybill shows the amount of freight. Is not that correct?—A. Now, you have some questions mixed up there.

10183 Suppose I hear that from the stenographer.

Q. Generally speaking, the freight is either prepaid, or follows the freight itself?—A. It must necessarily, generally speaking; yes.

Q. And the waybill shows the amount of the freight?—A. I have already——

Mr. ROSENTHAL. Wait a minute. That involves three distinct questions, Mr. Kellogg.

Q. Well, suppose it does.

Mr. ROSENTHAL. And it calls for a yes or no answer.

Mr. KELLOGG. No, it does not call for a yes or no answer.

Q. I ask you if, generally speaking, the waybill does not show the amount of the freight?

Mr. ROSENTHAL. That is a different question.

A. Generally speaking; yes, sir. I have already testified to that effect several days ago.

Q. Now, whether the freight is prepaid, or whether it follows the shipment, that rule is generally true, isn't it?—A. That is correct.

Q. That is what I thought. Now, I understood you to say, in explanation of the low rates to Burlington, that Burlington was a water point, or reached by water routes. Is that correct?—A. Burlington is a point of water competition from New York Harbor.

Q. What has that got to do with the rail rates from Olean to Burlington?—A. Well, railroads recognize water competition.

Q. What has that got to do with the rate from New London to Burlington?—A. Why, if Burlington is a point of water

10184 competition, and admittedly so——

Mr. ROSENTHAL. In connection with the sale of petroleum oil and its products——

WITNESS. He has not got to that yet. I understand it is the general question.

Q. Go ahead.—A. If Burlington is a point of water competition, and admittedly so, why, all rates made in there on business that could possibly be competitive with the water route would have some bearing on that water competition, or would be adjusted more or less on account of that water competition.

Q. I am talking about oil rates now.—A. Your first question was——

Q. Is Burlington a point of water competition affecting the oil rates, or is it not?—A. Burlington is a point of water competition on shipments of barreled oil from New York Harbor, and as my counsel has stated earlier in the case, my testimony will be followed, when we go to New York, by men who will testify that they have taken oil from New York Harbor to Burlington by water.

Q. Well, is that a reason for an oil rate from Olean to Burlington?—A. As those rates were put in force so many years ago, I will not be able to answer that question unless you will permit me to answer it in the light of my own experience; and that would be that if I was general freight agent of the Central Vermont road, and if I knew that large quantities of traffic of all kinds came into Burlington by water, I certainly would take that element of water competition into consideration when I made a rail rate in there.

10185 Q. Now, I want to know if the rate from Olean to Burlington was made low on account of the water competition to Burlington or not.

Mr. ROSENTHAL. Mr. Felton did not make that rate, and was not there when the rate was made.

A. There was no through rate from Olean to Burlington.

Q. Well, the combination of locals, then, that made your through rate.—A. I do not think that either one of those rates had anything to do with the other one in making that combination of locals. I think, to answer your question, we would have to consider simply the rate from Norwood down, $28 a car.

Q. Then, you don't think Burlington had anything to do with making those low rates?

Mr. ROSENTHAL. He has not said so.

A. Burlington?

Q. Yes; the water competition to Burlington.—A. I have answered that I do not know. The rates were made before I knew anything about that eastern district in its relation to oil. I have told you what I would do if I had been general freight agent of that road.

Q. Now, I simply want to get at the facts.

Mr. ROSENTHAL. Is that a joke?

Q. Do you say that the rate from Norwood to Burlington of $23 a car was made on account of the water competition at Burlington?—A. I said that the general freight agent in charge at that time (1893 I think it was; I did not know anything about their business
10186 then) may have had that in mind when he made the rate.

Q. But you don't know anything about whether it had anything to do with the making of the rates or not, do you?—A. I do not. Those rates were made before I had anything to do with the company.

Q. If water competition affected the rate from Norwood to Burlington and made it a low rate, did water competition make a low rate from Norwood to Rutland and Bellows Falls?

Mr. ROSENTHAL. They go right on through Burlington, don't they?

A. Rutland and Bellows Falls—if you are looking for a reason for the rate from Norwood to those two points, Rutland and Bellows Falls were straight Boston rate points on oil, and it may be that when the carload rate was made from Norwood to those points it was made with that idea in mind.

Q. I am trying to find out what effect this water conpetition had on those rates. Now, will you please tell us?—A. I have answered all your questions so far. Go ahead and ask your questions and I will answer them.

Q. I have asked you one. Go ahead, please.—A. I can't answer a question that takes in the whole State of Vermont on account of water competition at Burlington.

Q. You don't know that water competition had anything to do with the making of those rates, do you?—A. I believe——

Mr. ROSENTHAL. I submit he has already answered that repeatedly. He has told you what he would have done if he were a freight agent at the time those rates were made.

Q. You believe what?—A. I have seen somewhere—I may
10187 be able to find them—tariffs of the Central Vermont Railroad

naming different rates for winter and different rates for summer from New York Harbor to Burlington, Vermont. That indicates that the Central Vermont road recognizes the water competition at Burlington; and if they recognize it to-day, they probably recognized it in the days of Mr. Chittenden, when these rates were made.

Q. Now, if water competition was a reason for making a low rate from Norwood to Burlington, it certainly was not a reason for making a low rate from Norwood to Bellows Falls and Rutland, was it, because they are not water competitive points?—A. I have explained to you that the basis, or the reason, for which I think the rates were made from Norwood to Bellows Falls and Rutland was, namely, that they were straight Boston rate points, taking 23½ cents from the West. I have offered nothing here—and you have gotten away from your question—I have offered nothing in evidence to show that Bellows Falls or Rutland were points of water competition.

Q. Did the Standard Oil Company ever ship any oil from New York Harbor to Burlington by water up the Hudson River and through the canal into Lake Champlain?—A. It made some few shipments. I told you about that the other day.

Q. When?—A. You asked me if I would get a memorandum of them, and I told you I would.

Q. Have you done it?—A. No; I have not had time yet.

Q. You don't know when those shipments were made?—A. I do not recall the years, Mr. Kellogg.

Q. Now, that oil would go up the Hudson River to what
10188 point?—A. Go up the Hudson River to Waterford, as I recall the town where it struck the D. & H. and Champlain Canal, or the Champlain and D. & H. Canal, or something of that kind, that took the boats into Lake Champlain. There is a very heavy traffic goes up there, a very heavy coal traffic; and, while we are on it, I was told by river men that a whole lot of oil goes up there without paying any rate at all; the man buying a boat load of coal would have that boat stopped at some dock in New York and put on 50 or 100 barrels of oil, and get it up free.

Q. Well, did you do that?—A. No, sir.

Mr. ROSENTHAL. That is one thing we never did. We should like to have done it, but we could not.

WITNESS. We will also show by a witness in New York that oil was taken by boat from New York to Vergennes.

Q. Now, if you will confine yourself to what you know, I guess your counsel will take care of you.—A. You were kind enough to let me talk freely on this subject, to get all the truth of it.

Q. Nobody can stop you.—A. I will stop whenever you tell me, whenever you want me to.

Q. Suppose you try to stop now.—A. I will stop right now, sir.

Mr. ROSENTHAL. Don't stop short of the truth, though, because that is what Bro. Kellogg wants, you know.

Q. Now, if you thought it was proper to ship oil from Olean into Vermont on these State rates, not filed with the Commission (I mean

the Olean to Rochester rate and the Rochester to Norwood rate) up to 1906, why was it that in 1905 the Standard Oil Company or the Vacuum Oil Company pumped oil at Rochester from one car into another, on its way to Vermont?

10189 Mr. ROSENTHAL. That assumes that that was done.

WITNESS. I do not recall anything of that kind.

Q. You don't recall it?—A. They may have had some cars running between Olean and Rochester that they wanted to keep in that service.

Q. Now, isn't it a fact that in June, 1905, the Standard Oil pumped oil from one car into another and sent it on its journey to Vermont, and for several months did that?—A. I do not recall anything of that kind.

Q. You do not? You never heard of that?—A. I do not recall that transaction. It may be that something of that kind was done. Does that inquiry cover from car to car, or does it mean that shipments were made out—does that inquiry cover from car to car?

Q. Yes, sir; oil pumped from one car into another directly, at Rochester.—A. I do not recall anything of that kind.

Q. Do you remember oil being pumped into a tank and then being pumped over into another car?—A. No; I do not recall any transaction of that kind up there.

Q. You do not?—A. What year was that?

Q. 1905.—A. No; that is a long way back. I do not recall that, Mr. Kellogg. It may be, if you say so.

Q. You have had several things to refresh your memory about what occurred at Olean and Rochester in 1905, haven't you?—A. Nothing has come up in the line of this car transfer that you speak of.

Q. Wasn't there testimony by certain Standard officials there in New York (I mean Vaccum Oil officials) to the effect that

10190 that was done?—A. In this case?

Q. Yes.—A. I had not read it or heard of it. I have not read the testimony in this case. There has been too much of it.

Mr. ROSENTHAL. There is not any testimony in this case to that effect.

WITNESS. I have not read such testimony nor heard of such testimony.

Mr. ROSENTHAL. It is a case of imaginitis.

Mr. KELLOGG. No; it is not.

WITNESS. Who testified to that effect?

Mr. KELLOGG. I do not recall. I will have to get it.

WITNESS. Well, it has been pretty recently in your mind, and it is three years off in mine, so our "recalls" are about even.

Q. When you were on your direct examination and put in Exhibit 122, I asked you to procure the actual shipments made by any of the Standard companies from Burlington to the various stations shown on Exhibit 122, in less than carload lots and in carload lots. Have you procured that information?—A. I have not had time, Mr. Kel-

logg. I will not be able to give you much information of that kind while I am testifying.

Q. You don't know that any shipments were made, then, do you, in less than carload lots, from Burlington to the points named in column 1 of Exhibit 122?—A. I have already testified to that, sir.

Q. Or in carload lots?—A. I have testified, as I recall my testimony, that I made no investigation along those lines. Of course you do not expect me to work out any of that detailed
10191 information during the time that I am spending all day on the witness stand.

Q. I show you Government Exhibits 622-A, B, C, D, E, F, G, H, and I. Did you write and receive letters of which those are copies?—A. I did not conduct that correspondence personally, but I have no doubt the letters were written by some one in my office, and received in return by my office.

Q. That is, the letters were written by some authorized person in your office, and received by you from the freight agents answering them?—A. Received by my office.

Mr. ROSENTHAL. Written by some employe of his office.

Q. Well, somebody authorized to write them?

Mr. ROSENTHAL. What do you mean by that—having specific authority to write them, or who wrote them under some general or pretended general authority?

Q. Somebody who had authority to write letters of that kind.—A. They were written by clerks in my office who conducted correspondence in regard——

Q. Who is "T" here; signed "H. E. Felton, T?"—A. I have a clerk in the office by the name of Tousey.

Q. What is his business?—A. At that time he was—what is the date of that letter?

Q. These letters are dated March 17 to 31, 1904.—A. At that time, I think, that the Mr. Hodge that I have previously referred to was in charge of the office, and Tousey was the clerk corresponding in regard to rates.

Q. Was he a stenographer?—A. No; he was a clerk that conducted correspondence.

10192 Q. These letters seem to have been answered by the general freight agent of the Central Vermont Railroad. Did your office receive answers to them, of which these are copies?—A. I have stated that I do not deny that that correspondence was conducted by my office.

Q. All right. Now, in this letter 662-A you say: "We are figuring on having for a time shipments to Bethel and Montpelier, Vermont, from New London, Connecticut. These shipments of course will be routed via the Central of Vermont. As you know, the combination rates via Burlington to these two points are lower than the through rate, and we wish to know if this combination rate will be applied if we consign the shipments through to destination." What

combination of rates did you refer to?—A. I could not say. I did not conduct the correspondence.

Q. Well, you know the situation up there. What combination of rates was your office referring to?—A. Why the letter states on its face.

Q. What are they?—A. Why do you ask me?

Q. Explain it.—A. It says "combination via Burlington."

Q. Very well, what combination, the combination of what rates? The combination of a 12-cent rate from New London to Burlington, that is one of them?—A. I will answer that in just a minute. I would like to read the letter.

Q. All right, sir.—A. The party writing that letter evidently referred to the combination of rates from New London to Burlington, and the rates from Burlington to Bethel and Montpelier.

10193 Q. Now, what were those rates? Take the rate from New London to Burlington, it was 12 cents a hundred, was it?—A. I think that rate extended back to that time. That is the rate to-day, and I think it went back to that period.

Q. What were the rates from Burlington to Bethel and Montpelier, referred to?—A. I do not recall the figures, but you have them probably.

Q. [Handing witness paper.] I show you the exhibit. Were they the rates referred to in petitioner's Exhibit 660–C?

Mr. ROSENTHAL. Does not your proof show all of that, Mr. Kellogg? Isn't it entirely uncontradicted?

Mr. KELLOGG. Yes; entirely uncontradicted, but I shall connect——

Mr. ROSENTHAL. Mr. Felton has not any personal knowledge of it at all.

Mr. KELLOGG. He knows what the rates were there.

Mr. ROSENTHAL. It is not contradicted in this case.

WITNESS. If that is the uncontradicted testimony, those were the rates. I do not recall what they were. You hand me a carbon copy of a sheet that does not even bear anybody's name on it and ask me if those were the correct rates. If those are the rates that you found we were using up there, why those are the rates that this letter refers to.

Q. Those were tank-car rates from Burlington, Vermont, to Montpelier and Bethel, Vermont, under a special rate order reading in part as follows: "Mr. William H. Green, agent, Burlington, Vermont. Mr. W. G. Crabbe, Auditor, St. Albans, Vermont.

10194 Dear Sir: Handling S. O. Company's shipments from Burlington in tank cars, you will waybill on the following basis, as from February 1st, 1903." Then follows "Montpelier, $36 per car; Bethel, $45 per car." Are those the rates referred to in those letters?—A. I assume they were.

Q. Those were made by special billing orders for the Standard Oil Company's benefit, were they?—A. The words "Standard Oil Com-

pany" appear there, the same as they appeared on the Gulf Refining Company, those that I put in evidence the other day.

Q. And in the same way they were for the benefit of the Standard Oil, as those other rates which you refer to were for the Gulf Refining Company, were they?—A. I do not admit that those rates were made exclusively for the benefit of the Standard Oil Company.

Q. Did anybody else ship on those rates?—A. Anybody else could have gotten them.

Q. Did anybody else get them?—A. I don't know.

Q. You know that you got them?—A. I do not even know that we got them. I will assume that we did if your investigators found that we were using them.

Q. I presume you would admit it after that. Did you understand those rates from Burlington were filed with the Interstate Commerce Commission?

Mr. ROSENTHAL. Do you know anything about it?

WITNESS. I do not know anything about it.

Q. Did you understand that they were filed with the Interstate Commerce Commission?—A. I do not know whether they were or not.

Q. Did you understand at the time that they were filed with
10195 the Interstate Commerce Commission?

Mr. ROSENTHAL. Did you have any understanding about it at all?

WITNESS. I had no understanding on the subject whatever. The fact of the matter is, I never saw the rates until very recently.

Q. You never saw this correspondence, then?—A. I do not recall that I ever saw it until Mr. Durand testified to it in Washington. Somebody may have called my attention to it before that time. Would you like an explanation of that?

Mr. ROSENTHAL. No, no, he would not.

Q. Why, certainly.—A. Why, the situation is simply this: The Central Vermont road made carload rates from Burlington to those two points. Now, that correspondence was evidently conducted for the purpose of preventing the Central Vermont from hauling those cars into Burlington and then out, Montpelier being south of Burlington, and it was a matter of convenience and of economy of transportation on the part of the Central Vermont Railway.

Q. And at the same time, as a matter of fact——A. We could have consigned those cars—if the man conducting that correspondence had any idea in his mind that he was doing anything illegal, he could have consigned those cars into Burlington, paid the interstate rate, taken possession of the property and reconsigned at the State rate, and nobody on earth could have found any fault with his doing it.

Q. But he did not do it, did he?—A. No, he did not think
10196 he was doing anything wrong.

Mr. ROSENTHAL. Nor was he getting a lower rate this way than he would have gotten the other way?

WITNESS. He was not.

Q. At the time these rates were in force from Burlington to various places, by billing orders which on their face were only for Standard Oil shipments, there were published tariff rates out of Burlington to these same places, very much higher, were there not?—A. There may have been.

Q. 3rd-class rates?—A. There may have been.

Q. Well, you know there were, don't you?—A. I know there was a 3rd-class basis, but I have not in mind whether the Central Vermont had any direct rates applying on carload business from New London to those stations. I think they did. I am not sure.

Q. And they were rates that were very much higher than these?—A. Yes; but the shipper had the right to use the sum of the locals, and his honesty of purpose was shown in the fact that he did that openly.

Q. Yes; the sum of the locals being a tariff that was not filed, and made for handling S. O. shipments?—A. I know, but this is an equity case, and you want the truth.

Q. Yes, sir.—A. The truth is all that stuff could have been consigned to Burlington, freight paid, delivery taken, and then reshipped, and no court in this land could have found any fault with it, because it was a perfectly legal transaction; but to save the extra haul into the city of Burlington, the clerk conducting that
10197 correspondence simply suggested to the railroads that the matter be handled in that way, which they were glad to do. Reconsigning, I understand, is permitted, by all the decisions that have ever been given on the subject, and that transaction was simply to avoid the extra haul and work and service of reconsigning the freight.

Q. But they were reconsigned under rates that were made for the Standard Oil Company alone, right on their face?—A. That would not make any difference, as long as the reconsigning had taken place.

Q. Did you ever know a tariff filed with the Interstate Commerce Commission that was made for the benefit of one shipper?—A. I could not answer that question either yes or no. I don't know.

Q. Don't you know that the New London rate of 12 cents a hundred, which was made for the benefit of the Standard Oil Company——

Mr. ROSENTHAL. Oh, yes; we put one in in this case, which I will remind you of.

Q. —— from New London to Burlington, was sent to the Interstate Commerce Commission, and returned because it was not made open to other shippers?—A. The 12-cent New London rate?

Q. Yes.—A. I never heard of that before, until just now.

Mr. ROSENTHAL. I call your attention to the rate given to the United Pipe Lines from Freemansburg to Constable Hook, which was filed with the Interstate Commerce Commission, and it was put in simply for one shipper, namely, the United Pipe Lines, and could not have been put in for anybody else.

Q. Is there a word on this tariff that Mr. Rosenthal refers
10198 to, 118, that it was made for one shipper alone? [Handing exhibit to witness.]

Mr. ROSENTHAL. Isn't there a phrase on there "to be used in connection with pipe line?"

WITNESS. There is. It reads: "Proportional tariff on refined and crude petroleum, when loaded from pipe line."

Q. Exactly. Now, if there was only one pipe line, it was only on account of one shipper?

Mr. ROSENTHAL. Was there only one pipe line there of the United?

WITNESS. I do not know.

Q. But this tariff is over a railroad, and is confined to the Standard Oil shipments, isn't it?—A. What is the difference whether it is by direct language or by implication?

Q. Well, there are other shippers that might ship over that, if it was open to other people from Burlington, are there not?—A. I don't know but what other shippers got the rate.

Q. There is no evidence that they ever got it, or anybody else.—A. There is no evidence that they did not.

Q. Oh, yes; there is.—A. I beg your pardon, not a bit.

Q. Did you make an arrangement similar to that for shipments of oil from Olean previous to that time?—A. I did not make that arrangement.

Q. Who did make it?—A. I am talking now about the one, Bethel and Montpelier.

Q. Yes.—A. I said that was made by some clerk—that correspondence was conducted by some clerk in my office.

10199 Q. Did you make a previous arrangement for shipments from Olean, so that instead of going to Burlington and out on 3rd-class rate they should go out on tariffs similar to these, and without going at all to Burlington?—A. I do not recall anything of that kind. Something of that kind may have been done.

Q. To Essex Junction, Enosburg Falls, and various other places?—A. It may have been done. I do not recall it personally.

Q. You do not recall it?—A. That was how many years ago? Will you give me the date of that data that you have there?

Q. November, 1902.—A. It is a long way back.

Q. Now, I notice, referring to Exhibit 129, that you make a rate from Toledo to Hartford of 27 cents a hundred on oil, and you give as your authority for that rate the C., H. & D. tariff I. C. C. No. 1188, dated February 2, 1904. I show you that tariff and ask you to point out any such rate on the tariff or authorized by it.

Mr. ROSENTHAL. Mr. Lown says it has got to be used in connection with the billing-book, Mr. Felton.

WITNESS. Yes; I had not got to that yet. I wanted to see what the rate was.

Mr. ROSENTHAL. Why can't he look that up over adjournment, Mr. Kellogg, and point it out to you in the morning?

Mr. KELLOGG. Well, let us see if he can point it out now.

Mr. DURAND. There is not any such rate.

Mr. ROSENTHAL. Well, I think I would prefer the statement of Mr. Felton and Mr. Lown on that to yours, Mr. Durand.

Mr. KELLOGG. Let him point it out, if there is any such rate.

10200 WITNESS. I will have to ask for time to look at the date on which I——

Q. Just look at the tariff (it is just before you) and point out a 27-cent rate to Hartford on that tariff anywhere.

(Witness examines documents with Mr. Lown.)

A. There are some conflicting clauses in the back of that tariff, and I would like to have time to get the data on which that rate was made. I have not got my file with me.

Q. How would you reach Hartford—by what railroads?—A. I can not answer any detailed question as to the making up of that.

Q. The New York, New Haven & Hartford reaches there, doesn't it, and the Central of New England?—A. Yes; but that tariff refers——

Q. Are there any other railroads that reach Hartford except the Central of New England and the New York, New Haven & Hartford road?—A. No; I understand not.

Q. Very well. Now, the New Haven & Hartford is not a party to that tariff, is it, in any way or shape?—A. Just a minute, if you please, Mr. Kellogg.

(Witness, Mr. Lown, and Mr. Martyn examine documents together.)

WITNESS. The indications are with respect to that one particular point on that exhibit, that we have been in error in the rate that we quoted.

Q. Yes. As a matter of fact, the New Haven road is not a party, and the Central of New England road excludes Hartford

10201 from the points taking Boston rates, does it not?—A. I will investigate further during the recess, but the indications are that we are in error in the rate that we quoted to that particular point on that subject.

Mr. KELLOGG. All right. That is all to-night, then.

(An adjournment was here taken until the morning of Tuesday, October 13, 1908, at 10.30 o'clock.)

10202 ROOM 677, FEDERAL BUILDING, CHICAGO, ILL.,
Tuesday, October 13, 1908—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison; on behalf of the defendants, Mr. Moritz Rosenthal, Mr. John S. Miller, Mr. Chauncey W. Martyn.

HENRY E. FELTON recalled and his cross-examination resumed, as follows:

By Mr. KELLOGG:

Q. At the time we adjourned last night we had under consideration the rate by the Cincinnati, Hamilton & Dayton to Hartford,

shown in defendants' Exhibit 129. You stated that you thought that was an error. Have you investigated further?—A. Yes, sir.

Q. What is your opinion now?—A. I find that that rate is an error. In that connection I want to call your attention to Cleveland, as to Hartford. We have got a wrong tariff reference.

Q. I will come to that. Now, New Britain and Willimantic, on Exhibit 129, showing rates from Toledo, were based upon the same tariff through Hartford, were they not?—A. Willimantic, which I seem to notice first—the same rate could be made through Campbell Hall.

Q. Yes; but you have based it there on this same tariff
10203 through Hartford, haven't you?—A. The Government exhibit is right on New Britain and Willimantic.

Q. And yours is wrong?—A. With respect to those two places; yes, sir.

Q. So that includes the three places, Hartford, Willimantic, and New Britain, on Exhibit 129?—A. Yes, sir.

Q. Now, in the Cleveland rate to Hartford you have cited, as authority for the rate of 24 cents, the New York, Chicago & St. Louis Railroad tariff, I. C. C. No. 1452, have you not, and the White Line eastbound billing book No. 33?—A. You are speaking now of Hartford?

Q. Of Hartford; yes.—A. I should have cited B. & O. tariff I. C. C. No. 4538, which makes the same rate that I have named, 24 cents.

Q. And what billing book?—A. The B. & O. tariff gives reference to an Erie Despatch billing book. The rate in my exhibit is correct; the tariff reference is wrong.

Q. Then, you should have cited the B. & O. tariff; what is the number of it?—A. I. C. C. 4538.

Q. And the Erie Despatch billing book.—A. The B. & O. tariff refers to the Erie Despatch billing book.

Q. And you say that by that B. & O. tariff and the Erie Despatch billing book it makes a rate of 24 cents from Cleveland to Hartford?—A. That is the way they read, as I interpret them.

Q. But the 24-cent rate could not be made by the tariff referred to
in Exhibit 129?—A. The rate in the exhibit is right;
10204 the tariff reference is wrong. Mr. Lown calls my attention to the fact that the tariff which we quoted in error from Cleveland to Hartford contained a wrong reference in another respect, namely, that the date of the tariff which we originally quoted did not correspond to your date, but that the second tariff did.

Q. Now, I call your attention to your Exhibit 142. How did you arrive at the mileages stated between Toledo and the various places, and Lima and the various places? Did you take the short-line mileage?—A. As I recall, my testimony in connection with this exhibit was that I had instructed it to be prepared on the basis of the short-line mileage.

Q. Now, that is the basis the Government used in its exhibit, is it not?—A. I don't know.

Q. That is as you understand those same exhibits? You are comparing with the Government's short-line mileage?—A. I could not answer those questions without looking up my data bearing on this exhibit.

Q. Now, you take the case of Cleveland to Richmond, Indiana, on Exhibit 142. Tell me how you arrive at the distance there?—A. I can not answer that question until I consult the envelope (I have it here) on which that exhibit was prepared.

Q. Have you it?—A. I have not in the court room. If you will give me a memorandum—if you will say where you find errors, I will——

Q. Isn't it a fact that the distance from Cleveland to Richmond, Indiana, is 230 miles by the short line, and that your exhibit shows it 283 miles?—A. My exhibit shows 283, but I can not answer
10205 the other part of your question without working it up.

Q. What did you use to arrive at that mileage?—A. I have already informed you that I did not personally prepare a number of these exhibits, following out the line of procedure that Mr. Durand testified to in Washington.

Q. Who did prepare it?—A. I could not tell you who helped on that. Mr. Lown may have worked on it. It may have been somebody else.

Q. Call Mr. Lown, then, and ask him.—A. I can not answer your question in detail.

Q. Ask him where he got it and let us find out.

WITNESS (to Mr. Lown). Did you make this exhibit, or was that made by Joe? He says the distance——

Mr. LOWN. No; I did not work on that.

WITNESS. He says the distance from Cleveland to Richmond is 230 miles.

Mr. LOWN. I did not work on that mileage at all.

Q. Just look at the official guide and see what the distance is (handing witness Official Railway Guide). Take the Big Four.—A. I will work it out if you will just let me have two or three minutes. If this is wrong I will tell you, Mr. Kellogg. Let me work it out in my own way.

Mr. ROSENTHAL. Have you the official mileage, such as you have on the Lake Shore?

WITNESS. This exhibit was prepared under my instructions to work it up on short-line mileages. Now, there is a whole lot of different ways to get from Cleveland and Lima and Toledo to most of
10206 these towns. If Mr. Kellogg will tell me the towns to which he says this mileage is wrong, during the noon recess I will check them up, and tell you this afternoon whether they are correct or not.

Q. The first one I should like to have you look at is that from Cleveland to Richmond, Indiana.—A. I will do that. All right, sir; I will put that down.

Q. Now, I will call your attention to the others.—A. If our statement is incorrect, of course I will promptly say so.

Q. From Toledo to Terre Haute.—A. Cleveland to Richmond——

Q. I will give them to you in order here. You need not write them down. I will give you a slip all made out, with the mileages on it.—A. All right.

Q. Let me state the towns so we will have them in the record; Toledo to Terre Haute; Toledo to Vincennes; Toledo to Crawfordsville, Indiana; Toledo to Effingham, Illinois; Toledo to Muncie, Indiana; Toledo to Pana, Illinois; Toledo to Jacksonville, Illinois; Toledo to Decatur, Illinois; Toledo to Mattoon, Illinois; Toledo to St. Joseph, Michigan; Toledo to Brownstown, Indiana; Cleveland to Marion, Indiana; Cleveland to Richmond, Indiana; Lima to La Fayette, Indiana. Now, this statement which I give you shows the routes by which the mileage was figured and the distance, and I ask you to look those up and see if there is an error.—A. Yes, sir. Now, Mr. Martyn, in working on this I would like the Government exhibit for which our Exhibit 142 is the counterpart, so that we can check it all together. I am under the impression that some of the mileages from Toledo to the points named in my exhibit were just taken bodily from the Government exhibit.

10207 Q. I simply give you that as a memorandum to look over.—A. In fact, it may be shown that we did not investigate the mileages from Toledo, but took your distances, which I think we did.

Mr. SCHINDLER. Not in those instances you did not.

WITNESS. I would like to see. I will work that up at noon.

Q. I will give you another one, and you can work that up at the same time.—A. Yes, sir.

Q. Referring to defendants' Exhibit 144——A. Are you going to point out errors now in 144 from Toledo?

Q. Errors from Lima, Ohio. You added the distance from Lima, Ohio, to various places.—A. We did.

Q. Now, I am just asking you to check up those distances by the short line mileage, and I give you a memorandum to check them up by.—A. All right. We will have that done. (To Mr. Lown.) Now, you get the Government exhibit in both cases.

Q. Did you look up last night to find out the date when you became connected with the Standard of Indiana and when you commenced to draw salary from that company?—A. No, sir. I thought my earlier answer to you covered that; that during the time I was on the witness stand you could hardly expect me to do things nights. Directly I get through I will look up that information.

Q. The company's office is here in Chicago, isn't it?—A. Yes; but by the time I get over there the people are away.

Q. Now, Mr. Felton, I notice by the exhibit which you just had—129, in Exhibit 131—the rate from Cleveland to various points

10208 on the Boston & Maine Railroad, and Exhibit 127, the rate from Cleveland to various points on the Maine Central Rail-

road, you make rates of 24 cents a hundred, citing as your authority the B. & O. Tariff I. C. C. No. 4538 and the Erie Despatch Guide Book, do you not?—A. There is no reference, in either of the three exhibits I have before me, to the Erie Despatch Guide Book.

Q. Well, but you use the Erie Despatch in connection with the Baltimore & Ohio Railroad to make those rates, do you? You testified to that, didn't you?—A. In some cases, where necessary to use the Erie Despatch in connection with the B. & O. 4538, we have done so.

Q. Take defendants' Exhibit 131, you use the Baltimore & Ohio tariff with what despatch book to make rates to the Boston & Maine Railroad points?—A. I will have to ask you to specify the points.

Q. All of them named in that exhibit; every one of them.

Mr. MARTYN. You mean all the points where he used the B. & O.?

Q. Every point where you used the B. & O. tariff. Please designate how you reached the points named in defendants' Exhibit 131.—A. In connection with the Erie Despatch Handbook named on the second page of the tariff.

Q. Very well. Now, please describe the process by which you make the rate, referring both to the tariff and the despatch book, and naming the rate. Take any one town and then state whether the same process applies to the other towns. Commence with the tariff and show just how it applies to those places.—A. I will take the first town on the exhibit.

10209 Q. All right, sir.—A. Arlington, Massachusetts.

Q. One moment. I have a memorandum here. Will you take Rockland, Maine?—A. Rockland, Maine, is not shown on this exhibit.

Q. Isn't it?

Mr. LOWN. I guess it is on one of those others.

A. Take Biddeford, Maine. That is a test place there.

Q. All right, take any town you please. Take Biddeford, Maine.—A. I will take, as I started in, the first place on the tariff—Arlington, Massachusetts.

Q. All right.—A. I have before me B. & O. Railroad Joint Freight Tariff applying on crude and fuel oil—applying on petroleum oil from a number of points, including Cleveland, Ohio, to points named within. I find on the second page of that tariff, under the head of "Concurring lines," "Erie Despatch." I want to make a rate to Arlington, Massachusetts. So I look at Erie Despatch book until I come to Arlington. I find on page 80 of that book Arlington, Massachusetts, as being located on the Boston & Maine Railroad, with instructions to waybill to Arlington at the Boston rates. The reference number opposite Arlington is No. 1. By turning to No. 1 I find that it says "Deduct 1 cent per 100 pounds from through rate before prorating, and allow the same to terminal road by adding to proportion in divisions or by allowing it as an arbitrary beyond the billing point, as the case may be." I then turn back to the B. & O. tariff and I

find that the all-rail rate from Cleveland to Boston is 24 cents. I find a triangular-shaped reference mark at Boston, and by
10210 hunting through the tariff to find what that means I find it simply relates to matters of delivery at Boston. I then say that the B. & O. tariff, in connection with the Erie eastbound billing instructions, applies the Boston rate of 24 cents to Arlington, Massachusetts.

Q. Now, the B. & O. tariff itself makes no rate to Arlington, Massachusetts.—A. Except by referring to the concurring lines on the second page.

Q. Now, the Erie Despatch is an east-bound billing instructions, isn't it, of the Erie Railroad, and on the front page contains the following: "East-bound Billing Instructions No. 15, via Erie Railroad Company and connections. Is that correct?—A. That is right.

Q. Now, what is the Erie Despatch?—A. It is a so-called fast freight line, operating over various railroads.

Q. What do you mean by "operating over various railroads?"

Mr. ROSENTHAL. That is a pretty plain statement, isn't it?

A. Why, what I mean by operating over railroads is that various railroads at times get together and agree to handle business; and then for the purpose of solicitation they use some designating term for their different routes, and I find that the Baltimore and Ohio Railroad was a part of the Erie Despatch, as shown on page 2. It says, "Erie Despatch, operating over the following railroads and their connections;" and under that heading I find Baltimore & Ohio.

Q. Now, the Erie is a road leading out of Cleveland, isn't it?—A. The Erie runs through Cleveland.

Q. It has a line from Cleveland east to New York Harbor?—A. It has.

10211 Q. It could take oil over its own line from Cleveland to Arlington, Massachusetts; over its line to New York Harbor, and then over the New Haven & Hartford road to Arlington, or by other routes, couldn't it?—A. It could take business from Cleveland to Arlington, Massachusetts.

Q. And the Baltimore & Ohio also have a despatch of their own, haven't they?—A. That is not before us now. We are talking about the Erie Despatch.

Q. I ask you if they do have a despatch of their own.—A. I imagine that the Baltimore & Ohio are parties to two or three despatch lines.

Q. Now, they have one of their own, haven't they, that they publish the same as the Erie?

Mr. ROSENTHAL. That assumes that the Erie publishes it own.

Q. It does.—A. Wait a minute. I have not seen a Baltimore & Ohio Despatch fast freight line book for a long time.

Q. You know there is one, don't you?—A. I do not deny that there is.

Q. You know that there is one, don't you?—A. Oh, Mr. Kellogg, I am not going to say "Yes" to please you when I have not seen the B. & O. book for five years.

Q. Well, five years ago there was one, wasn't there?—A. I don't know that there was. I have seen, sometime in my career, B. & O. fast freight line books, and I have admitted that there are some. Now, do not ask me questions and expect that just to please you I am going to talk about things that I do not know of personally.

10212 Q. Each of the big railroad systems in the East publishes a Billing Instructions or Fast Freight Line book, something like the Erie's, doesn't it?—A. Yes; and many of them participate in each others, just as the B. & O. participates in the Erie Despatch, as shown in that book. The B. & O. road is shown right in there as a party to that book.

Q. Now, the Erie Despatch book is a despatch book published by the Erie Railroad, isn't it?—A. Published by the Erie Railroad and referred to by the B. & O.

Q. Now I show you the Erie Railroad tariff, the joint freight tariff of the Erie Railroad with the Boston & Maine Railroad, the Central Railroad of New Jersey, the Delaware & Hudson Railroad, the Elmira, Cortlandt & Northern Railroad, the Fitchburg Railroad, Fall Brook Railway, Lehigh Valley Railway, and Philadelphia & Reading Railway, being I. C. C. No. A–114, on refined and lubricating oil, crude oil or petroleum, and so forth, in carloads, from various places including Cleveland, Ohio, to points on the Boston & Maine Railroad—and ask you if it does not contain the following instruction on page 2, under rules and conditions: "For points off the Erie Railroad taking Rochester, Hornellsville, Elmira, Boston, Philadelphia, Baltimore, and Albany rates, see current Erie Despatch East-bound Billing Instruction except to points on Boston & Maine Railroad not shown on page 6, and points on New York, New Haven & Hartford Railroad, New England Railroad, and Philadelphia & Reading and New England railroads, to which points Boston rates will not apply." Is that true?—A. That is correct.

10213 Q. So that the Erie Railway tariff leading out of Cleveland to the same points on the Boston & Maine Railroad contains an instruction——

Mr. ROSENTHAL. Wait a minute. The Erie tariff of 1896——

Q. Wait until I finish my question.

Mr. ROSENTHAL. The Erie tariff in effect March 12, 1896.

Q. Wait a minue. So that the Erie tariff issued in connection with the Erie Despatch book shows that the Boston rates will not apply on oil to points on the Boston & Maine Railroad out of Cleveland, does it not?—A. Yes; but that does not affect the B. & O. tariff.

Q. Very well. That is true, is it, nevertheless?—A. I have not compared the dates, but I know there was an Erie tariff.

Q. This is the tariff you have cited in your exhibits, isn't it?—A. Yes; we have used this tariff.

Q. And it is in effect now, isn't it?—A. Yes. That did not affect the B. & O. rate out, and I will tell you why it didn't. Somewhere along in this testimony the Boston & Maine road has gone on record as stating that it never declined to prorate on petroleum oil.

Q. I ask you if——

Mr. ROSENTHAL. Let him finish his answer. You go ahead and finish.

A. Somewhere (I don't know where, but I can find it) during Mr. Durand's investigation under Mr. Garfield he was told by the Boston & Maine officials that they had never declined to prorate on petroleum oil, and there never has been a bit of evidence introduced in this case to show that they did decline. Now, if the Erie Railroad
10214 publishes in its tariff a declaration to the Cleveland shippers that the rates named in their oil tariff taking Boston rates do not apply to the Boston & Maine road, that in no way affects the rates made out of that town by the B. & O. road, although they happened to refer to an Erie Despatch handbook to get the list of stations. Those two things stand just as separate as day and night.

Q. Now, are you through on that? Did not Mr. Tuttle state to the Bureau of Corporations that the Boston & Maine road had never prorated on oil except to certain limited stations?—A. I don't know as to that. I know that somewhere along——

Q. Where did you get your information?—A. Somewhere. I will dig it out and show it to you.

Q. All right. You had better do it.—A. Yes, sir.

Q. Now, don't you know that the Interstate Commerce Commission decided in 1906 that the New Haven & Hartford and Boston & Maine roads, and all those roads except the Fitchburg division of the Boston & Maine and the Boston & Albany refused to prorate on oil?

Mr. ROSENTHAL. Wait just a minute.

WITNESS. No; they took up the point that there was no through rate——

Q. I ask you if in a case brought before the Interstate Commerce Commission by Fred G. Clarke & Company against the Boston & Maine Railroad and the New York, New Haven & Hartford Railroad, and by the Waverly Oil Works against the same companies, among others, if the Interstate Commerce Commission, after investigating all the facts, did not decide that those roads had refused to prorate on oil to New England points?

10215 Mr. ROSENTHAL. Where do you get the authority for the statement that the Interstate Commerce Commission investigated all the facts?

Q. They state them in their decision. Is that true, and that that decision was made February 14, 1906?—A. You put in my hands a pamphlet of 25 or 30 pages, in which is a brief, winding up with an order; but, of course, I could not answer you unless I saw all the testimony on which this decision was based.

Q. You remember the case very well, don't you?

Mr. ROSENTHAL. Is not that an exhibit in this case? Didn't you gentlemen undertake to put that in as an exhibit in this case?

Mr. KELLOGG. It is in already as an exhibit in this case.

Mr. ROSENTHAL. That is, it was sort of thrown in.

Mr. KELLOGG. No, sir; it has been introduced as an exhibit in this case.

Q. You were familiar with the case, were you?—A. No, sir; I did not follow it at all.

Q. You knew there was such a case?—A. I read about it in the newspapers, I think.

Q. Do you think Fred G. Clark & Company, of Cleveland, Ohio, and the Waverly Oil Works would have prosecuted a case against those companies before the Interstate Commerce Commission, and that those companies would have appeared and answered and admitted that they did not prorate, and had all that hearing, and never discover the rates which you mention?

Mr. ROSENTHAL. I object to that. You are not obliged to make any random guesses, Mr. Felton.

10216 WITNESS. Have you got anything before you showing that Boston & Maine had an official who responded to that inquiry and testified?

Q. We show that the Boston & Maine appeared and answered by Mr. E. J. Rich and was heard in this case.—A. Very well. I will have to see what he said before I could——

Q. And the New York, New Haven & Hartford by R. E. G. Buckland?

Mr. ROSENTHAL. And that opinion undertakes to say what the answer is, does it?

Mr. KELLOGG. The opinion undertakes to say what the facts are and that they refused to prorate on oil.

Mr. ROSENTHAL. No, no. Does the opinion show the answer of the road and set it out or any of the evidence offered by the road?

Mr. KELLOGG. Yes; it shows the evidence, because they recite the facts.

Mr. ROSENTHAL. That is the reason it shows the evidence?

WITNESS. I did not get through with my answer to Mr. Kellogg's general question, based on the fact that there was a B. & O. tariff out of Cleveland and an Erie tariff that conflicted.

Q. Now, I heard you——

Mr. ROSENTHAL. Wait a minute. The witness is in the midst of an answer. Let him answer. Go ahead, Mr. Felton.

WITNESS. I made one division of my answer based on what I understood was the position of the B. & M. road. My other division of the answer is that it did not make a particle of difference

10217 whether the Boston & Maine Railroad prorated on oil or not, so long as the B. & O. Railroad filed with the Interstate Commerce Commission a tariff referring to another tariff filed with the commission which jointly applied the Boston rate to those Boston & Maine stations. What has a shipper got to do with things of that kind when the railroad puts in his hands a tariff that names a rate? Has he got to go to all the roads along the line and see whether they have any little peculiar rules that affect that when the B. & O. general freight agent says "There are our tariffs?" Is the

commerce of the country going to be tied up by a lot of little intermediate regulations that may exist when the two books are put in the hands of a shipper? What relief has a shipper got? Where does he stand if he can not use a tariff filed with the Interstate Commerce Commission that, as clearly as those two tariffs did, makes rates to points on the Boston & Maine road?

Mr. ROSENTHAL. That is to say, if the Erie Railroad——

Mr. KELLOGG. Now, you wait until I get through cross-examining this witness.

Mr. ROSENTHAL. If the Erie undertakes to make the rate——

WITNESS. The B. & O., you mean.

Mr. ROSENTHAL. If the B. & O. undertakes to make a rate, there is not any minor regulation that the Boston & Maine can make that will in any wise affect the rate made by the B. & O.

WITNESS. The rate issued by the initial road, filed with the Interstate Commerce Commission, is controlling. You can not deny that.

Q. What is the initial road out of Cleveland?—A. In this case the B. & O., because it is their tariff.

10218 Q. Is not the Erie also an initial road out of Cleveland?—A. That does not make any difference. That is a B. & O. tariff.

Q. Is the Erie road an initial road out of Cleveland?—A. No more than the B. & O.

Q. Is it an initial road out of Cleveland?—A. No, sir; no more than the Lake Shore, the B. & O., or the Nickel Plate.

Q. Is the Erie road an initial road out of Cleveland?—A. It is one of a whole lot of initial roads. It does not stand as an initial road——

Q. It is not an initial road, connected with its own Erie Despatch, I suppose, is it?—A. The Erie road has no more strength with that fast freight line book than the B. & O. has, because the B. & O. is given here as a part of it, right on the second page that I quoted.

Q. Do you say that the B. & O. can use the Erie Despatch for originating shipments out of Cleveland, Ohio? Now, answer that question.—A. Yes, sir; under those two tariffs.

Q. All right. That is all I want of you on that.

Mr. ROSENTHAL. Now, he has been answering that for 30 minutes.

Q. Were you once the Lake Shore general freight agent?—A. Yes, sir.

Q. Did the Lake Shore & Michigan Southern, when you were its general freight agent, have prorating arrangements with the Boston & Maine Railroad to these points?—A. I could not say; I don't know.

Q. Can you say by looking at the tariffs?—A. I might and I might not.

10219 Q. Don't you know that it did not have one single prorating arrangement to any of these places?—A. No, sir; I do not know that it did not.

Q. Do you know that it did not have in 1905?—A. I don't know whether it did or not.

Q. Will you look at the Lake Shore tariff and find out whether it had prorating arrangements to these places in 1905 from Cleveland?—A. We are talking about the B. & O.

Q. Will you answer my question, sir, or will you not?

Mr. ROSENTHAL. Oh, he is answering them to our entire satisfaction, even if he is not to yours—categorically.

WITNESS. Of course you might ring in all the tariffs of all the roads out of Cleveland.

Q. Will you state whether in 1905 the Lake Shore Railroad, leading out of Cleveland, had in connection with any railroads prorating arrangements to any of the towns mentioned in your exhibits, except Boston?

Mr. ROSENTHAL. If you can answer from any document before you, Mr. Felton.

WITNESS. Oh, I am going to answer his question, but I was wondering if he was going to follow it up with all the roads out of Cleveland.

Q. Don't wonder what I am going to follow it up with. You just attend to the question in hand.—A. I will answer them just as fast as you put them in.

Q. Take defendants' Exhibit 131 that you have been talking about, on the Boston & Maine railroad.—A. Defendants' Exhibit 131 has got nothing to do with the Lake Shore road. There is not
10220 a Lake Shore tariff referred to on that exhibit. Now, I will answer your question in regard to these tariffs.

Q. Take the towns named in your Exhibit 131 on the Boston & Maine Railroad and tell me whether the Lake Shore Railroad, in connection with any railroads, had prorating arrangements to any of those places in 1905, or made the rates——A. Now, you have got it.

Q. Or made the rates named in Exhibit 131?—A. Now, you are getting that question where I can answer it intelligently.

Q. Very well, answer it.—A. When you give me a tariff and ask me if a road has prorating arrangements, you ask a question that the tariff does not answer. When you give me a tariff and ask me if that tariff names rates, then I can answer your question.

Q. Well, answer the question, then.—A. Yes, sir; now I will give it to you. Why, this tariff which you have handed me to ask me a whole lot of questions about the Boston & Maine road does not apply into New England at all. It is a tariff naming points west of the termini of the trunk lines in the States of Indiana, Michigan, and Ohio.

Q. Perhaps I have handed you the wrong tariff. I will get you the right one. I show you the Lake Shore & Michigan Southern Joint Freight Tariff, I. C. C. No. 1353, effective November 2, 1903, and ask you if by that tariff a rate to Arlington, Massachusetts, was made of 24 cents, as you claim was made, by the B. & O.?—A. This

tariff, which I have not in any way relied upon to make my rate out of Cleveland, does not apply the Boston rate to Arlington.

Q. What is the rate to Arlington?—A. It provides by ref-
10221 erence 7 to add 3½ cents per 100 pounds to the Boston rate.

Q. Which would make it how much? 27½ cents, wouldn't it?—A. 27½ cents; yes, sir.

Q. Now, isn't it true that as to all the points on your exhibit 131 the Lake Shore tariff does not make any such rates as you claim the Baltimore & Ohio makes to any of the towns on that exhibit?—A. I have not checked it up to find out.

Q. Check it up and see.—A. Do you want me to take the time now?

Q. Yes, sir.—A. I will do it with pleasure.

Q. All right.

Mr. ROSENTHAL. How long will that take you, Mr. Felton?

WITNESS. Oh, ten minutes, maybe.

Mr. ROSENTHAL. Why not let Mr. Lown check it up and you go ahead and testify?

WITNESS. If you are willing, Mr. Kellogg, I will have my assistant check the rates, and I will abide by his decision.

Q. I will ask you as to one or two towns on the other division, and then you can check them all up.—A. Yes.

Q. Now, take Rockland on your Exhibit 127. You show the B. & O. rate to Rockland out of Cleveland in connection with eastern lines to be 24 cents, do you not?—A. Yes, sir.

Q. What is it to Rockland by the Lake Shore tariff?

Mr. ROSENTHAL. You understand there is no claim made by us on this record that the Lake Shore tariff makes the same rate as the B. & O.

Mr. KELLOGG. I understand that.

Mr. ROSENTHAL. We have never made that contention.

10222 Q. What is the rate to Rockland?—A. One moment, and I will tell you, sir. [Witness examines the tariff with Mr. Lown.] The rate shown in the Lake Shore tariff, on which I placed no reliance in making my exhibit, shows a rate from Cleveland to Rockland of 44 cents per 100 pounds.

Q. Now, the arbitrary over the Boston rate—or, in other words, the local rate from Boston to Rockland—was 20 cents, was it?—A. No, sir.

Q. What was it?—A. There is a notation in there that the way to make the rate to Rockland is to allow 10 cents from Boston to Portland, Maine, and then 10 cents from Portland, Maine, to Rockland.

Q. Then the local rates——A. No; the local rate, you said.

Q. The two local rates from Boston to Rockland amount to 20 cents a hundred?—A. Yes, sir; the local rates, 20 cents.

Q. So that under the Lake Shore tariff, in connection with the Maine Central Railroad and other intermediate railroads, the rate from Cleveland to Rockland was 44 cents, as against the B. & O. rate of 24 cents. Is that correct?—A. That is the way the tariffs read.

Q. That is the way the tariffs read. Was that the case when you were general freight agent of the Lake Shore road?—A. Well, I used to find the B. & O. road were the greatest fellows for working combinations that I ever had in my life.

Q. Was there ever a carload of oil shipped out of Cleveland on the B. & O. road on those rates to any one of those towns?—A. Oh, I could not say. Why do you ask me?

Q. Have the Standard Oil Company ever shipped any?—
10223 A. Why do you ask me questions like that, that you know no man on earth could truthfully answer?

Q. Has the Standard Oil?—A. How do I know whether there was a carload of oil ever shipped out of Cleveland via the B. & O. on that tariff? What a question that is to put to a witness:

Q. Will you please answer my questions——

Mr. ROSENTHAL. He is doing it.

Q. And be a little less insolent?—A. I have no insolence in my mind towards you at all, Mr. Kellogg; but do not ask me questions like that, because——

Q. Aren't you supposed to know how the Standard Oil ships?—A. Why, you didn't ask me that question.

Q. I asked you if the Standard Oil ever shipped a carload——

Mr. ROSENTHAL. Oh, no; you didn't.

Q. I ask you now if the Standard Oil ever shipped a carload of oil on that rate, or any one of those rates, to any one of those towns shown on those three exhibits, on the B. & O. road?—A. I do not know.

Q. Will you find out if it ever made any such shipments?—A. I will. Will you make a note of that, Mr. Martyn?

Q. The Lake Shore road is a direct route from Cleveland to Boston, isn't it, via the Boston & Albany Railroad?—A. It has a very direct route.

Q. It is the most direct route of any of them, isn't it?—A. I think it is.

Q. By what route would you make a shipment by the B. & O. road to Rockland, Maine?—A. I would simply give it to them, if I was an oil dealer at Cleveland, and expect them to protect me.

Q. By what route would you ship it?—A. I would simply
10224 give it to them. I would not route it.

Q. By what route would it go?—A. I don't know.

Q. You don't know?—A. No, sir.

Q. You have no knowledge of where it could go to get to Rockland, Maine?—A. I am answering your question now. Your question involves the question of a shipper.

Q. But you are a traffic manager of 30 years' experience, your counsel has at various times stated.—A. Never mind about that. You are asking me a question, what I would do if I was a shipper at Cleveland. I would simply turn the car over to the B. & O. road, and expect them to protect the rate that they filed with the Interstate Commerce Commission, and they would protect it.

Q. Tell me how the B. & O. could get that shipment to Rockland.—A. I don't know.

Q. By what lines?—A. I don't know.

Q. You don't know anything about it?—A. No, sir.

Q. Where does the B. & O. road run to from Cleveland?—A. Oh, they have lines east——

Q. Where—to what point? How do they reach New York Harbor?—A. You can tell from the map.

Q. Well, you tell me. I am asking you.—A. I will have to take the map.

Q. Look it up, then, and tell me how the Baltimore & Ohio Railroad reach New York Harbor.

(Witness refers to the Official Railway Guide.)

A. Why, they have got a line to New York Harbor.

Q. Through Washington?—A. Yes, sir.

Q. That is the only line they have got to New York Harbor,
10225 isn't it?—A. Yes; but they do not have to go through New York Harbor to get into Massachusetts.

Q. Well, now, how would they go?—A. As I see here, I can count about fifteen connections that run across them, northeast and southwest.

Q. How would the Baltimore & Ohio take that shipment to Rockland, Maine; by what lines?—A. Why, Mr. Kellogg, there are all kinds of connections.

Q. Name them.—A. I see one here——

Q. Yes.—A. Now, understand, in the first place, that I am not responsible for the routing——

Q. Oh, I understand.—A. But if you want to ask me where the B. & O. goes, I can tell you where the B. & O. goes; but my answer is in no way saying as to what route the B. & O. Railroad used in making that rate. I see a connection here where they could go. The B. & O. went up to a point where they could make connection, I take it, with the Buffalo, Rochester & Pittsburg road and go up into Buffalo.

Q. That is, the B. & O. has got a railroad from what place? From Cleveland down to where?—A. There is a connection down there to—I don't know, I can't make out the name of that city. This map is divided into junctions, into parts.

Q. Then, you don't know what route they would make?—A. I don't know. They had all kinds of connections.

Q. You say the rate from Boston to Rockland—first from Boston to Portland over what line, was 10 cents?—A. It did not specify the line. It said that——

Q. What would be the line from Boston to Portland?
10226 There is only one railroad there, is there?—A. It would go naturally by the Boston & Maine.

Q. It would have to be, because there is not any other, is there?—A. I think that is the only road.

Q. The Boston & Maine—that is 10 cents a hundred, is it?—A. That is what that tariff reads.

Q. And from Portland to Rockland is 10 cents?—A. I have already explained that; yes, sir.

Q. That is 20 cents a hundred over the Maine Central. Now, that taken out of the Baltimore & Ohio 24-cent rate would leave the Baltimore & Ohio 4 cents for hauling from Cleveland to Boston in connection with all its connections? Is that correct?—A. No.

Q. Well, how was the rate divided—the 24 cents divided?—A. I don't know. They might have had prorating arrangements for all I know.

Q. Well, did they have?—A. I don't know.

Q. You don't know anything about the prorating arrangement?—A. I have simply put in evidence the tariff published by the B. & O. road.

Q. You don't know whether any shipments were made by it?—A. Beyond that I cannot go.

Q. You cannot?—A. That is good enough for me—a tariff filed with the Interstate Commerce Commission.

Q. I should think it would be. Now, when you were traffic manager or general freight agent of the Lake Shore road, the most direct line to all these Maine points, did you permit the Baltimore &
10227 Ohio road to have rates to all these places from 10 to 20 cents less per hundred than the Lake Shore?—A. I do not remember specifically, but I remember generally that when I was general freight agent of the Lake Shore road, the Baltimore & Ohio road was the biggest thorn that I had jabbed into my side. They were the greatest manipulators that we had to do with, wherever we came in contact with them.

Q. Now, if they manipulated rates to the extent of 10 to 20 cents a hundred, you would have been pretty apt to discover it, wouldn't you, especially if they did it with open tariffs, as you say, filed with the Interstate Commerce Commission?—A. Oh, they had lots of tariffs out of Cleveland that we did not have time to check.

Q. Did you discover any such rates when you were Lake Shore general freight agent?—A. I don't remember anything about it.

Q. You don't remember anything about it?—A. Not a thing.

Q. Cleveland is quite a large oil-producing place, isn't it?—A. Yes, sir.

Q. It has several independent refineries there?—A. I could not say as to that.

Q. It has independent refineries there, hasn't it?—A. I understand it has.

Q. You have already testified to that, haven't you?—A. I have testified that I understood there were.

Q. And the Standard refinery there?—A. That is true.

Q. And the Lake Shore road, reaching New England from there, permitted the Baltimore & Ohio to have rates from 10 to 20 cents a hundred less, did it?

10228 Mr. ROSENTHAL. He has not said so.

A. I have answered that question by telling you what the Lake Shore—the same thing happened at Toledo——

Q. Now——

Mr. ROSENTHAL. Wait a minute. What?

WITNESS. The same condition prevailed at Toledo. The Lake Shore relied on their combinations to get into points on the Central Vermont, while the Grand Trunk road had a through tariff of 27 cents. Nothing unusual about that.

Q. Now, you said the same thing happened out of Toledo by the Grand Trunk.—A. I did.

Q. That is, if your construction of the Grand Trunk tariff is correct?—A. I believe it to be correct.

Q. Do you believe that any shipments were ever made out of Toledo on any such rate as that on the Grand Trunk?—A. I do not know, Mr. Kellogg.

Q. You have been talking with the officials of the Grand Trunk road, haven't you?—A. As I have told you, I do not think if any of this work where I have been making rates—I have not investigated the matter of shipments.

Q. Did it occur to you to find out whether anybody ever shipped a car over that Grand Trunk road on any such rate as that?—A. Perfectly immaterial to me so far as the exhibits I am putting in here.

Q. Is it?

Mr. ROSENTHAL. Why?

WITNESS. Because I am not answering the Government's contention as to shipments, but as to rates.

Q. What is the use of having a rate if nobody could ship under it?

Mr. ROSENTHAL. That is what we say. Why did you put in a lot of hypothetical exhibits? We are answering your hypothetical exhibits and are demonstrating their asininity.

Mr. KELLOGG. Yes; the asininity of your exhibits. That is what we are demonstrating.

Mr. ROSENTHAL. That will be for the court to pass upon.

Mr. KELLOGG. It won't take the court long to pass on that.

10229 Have you checked up those rates, Mr. Lown?

Mr. LOWN. Those mileages?

Mr. KELLOGG. No; those rates over the Lake Shore.

Mr. LOWN. No.

WITNESS. I think he understood he was to do that during the noon recess.

Mr. KELLOGG. All right. Will you also at the same time check them up from Toledo?

Mr. LOWN. All right.

Mr. KELLOGG. I want the amount of the rate to each place on the three exhibits, via the Lake Shore tariff, both from Toledo and from Cleveland.

Mr. LOWN. All right.

Mr. ROSENTHAL. We do not question the Lake Shore rate as shown by you, Mr. Kellogg.

Mr. KELLOGG. I want to know the difference in the amount in each.

Mr. ROSENTHAL. It shows right on the face of the exhibits in every instance.

Mr. KELLOGG. Well, if he will say those are the rates by the Lake Shore tariff then I will ask some questions.

Mr. ROSENTHAL. We do not question the rate.

WITNESS. We do not question the accuracy of the rates you quote, but we question the——

Q. Referring to your Exhibit 127, during the time that you claim these rates from Toledo were in force over the Grand Trunk Railroad to the points named in 127, on the Maine Central road,

10230 the Lake Shore Railroad had tariffs in force from 13 to 23 cents per hundred, with the exception of one town—from 13 to 23 cents per hundred more than the rates over the Grand Trunk, which you testified to?—A. That, generally speaking, is the spread and the difference indicated by the tariffs of competing roads.

Q. That is, that is the spread between the Lake Shore road and the Grand Trunk road, is it?—A. Yes, sir.

Q. Now, was that the condition when you were general freight agent of the Lake Shore road?—A. I do not know.

Q. You kept pretty close track of your competitors, didn't you?—A. But you should not ask me about details of traffic ten years ago. That is a long ways back.

Q. Now, you say, for instance, that the rate to Beecher Falls, Vermont, over the Grand Trunk road, was 27 cents a hundred, and over the Lake Shore 50 cents a hundred, nearly twice as much?—A. That is the way the tariffs read. I would like to look at that one point to see if you have got that right. Is that Beecher Falls?

Q. Beecher Falls; yes.—A. You have got here on your exhibit—and we did not check your rates, but we knew there were lower rates. Now, you ask me if your rate of 50 cents to Beecher Falls is correct. I do not think it is. It may be. I will see in a minute. The rate shown in the Government exhibit of 50 cents from Toledo to Beecher Falls is correct in accordance with the Government's tariff authority.

Q. It is correct in accordance with the Lake Shore & Michigan Southern Railway tariff, isn't it?—A. As to that particular tariff; yes, sir.

Q. Do you know of any other tariff that makes a different rate?—A. Yes, sir.

10231 Q. Where is it?—A. Grand Trunk, I. C. C. No. —.

Q. I am talking about any other Lake Shore tariff.—A. I have not been able to find anything different on the Lake Shore.

Q. So as to all the places on Exhibit 127 on the Maine Central and Exhibit 131 on the Boston & Maine Railroad, the Lake Shore did not prorate to those towns, but demanded arbitraries over the Boston rate?—A. You have been talking about that tariff. I think I can

beat your rates out of Toledo over the Lake Shore by using combinations on Mechanicsville.

Q. I am asking you if it is not true as to every one of those places.—A. As to that particular tariff?

Q. Yes.—A. But I think I can beat your rates over the Lake Shore by other Lake Shore tariffs.

Q. Well, you haven't done it.—A. I haven't tried to do it because the other was so much lower. I may make a little investigation into that field and see where I land.

Q. Now, did you talk with any of the officials of the Grand Trunk Railroad?—A. In regard to what?

Q. In regard to this tariff that you have been testifying to.—A. I did.

Q. Did they tell you they had ever made a shipment on that tariff?—A. I never asked them.

Q. It didn't occur to you to find out whether the tariff could be used for shipments, I suppose?—A. I have said already——

Mr. ROSENTHAL. Wait a moment. Get his question.

(The question was read.)

A. The tariff showed on its face it could be used.

10232 Q. I show you the National Despatch-Great Eastern Line book, which you used to make the rates over the Grand Trunk, and ask you what this means, on page 1: "Petroleum or its products, whether in tank cars or in packages, must not be taken under the instructions of this Guide, but such shipments will be subject to special tariffs and local regulations of railroads interested." What does that mean?—A. That means that the instructions contained in that book will not apply unless there is a special tariff.

Q. Yes; unless there is a special tariff naming rates to the particular place?—A. Not necessarily.

Q. Well, it would have to name rates. A tariff is not a tariff unless it names rates?—A. It can refer to another document which gives a list of points.

Q. What document does the tariff refer to?—A. The one you have got in your hand, unless there was a special tariff.

Q. So you refer this Eastern book to the special tariff for the authority, and the special tariff back to the Eastern book for authority, do you?—A. They must be read together.

Q. And, reading them together, this clause has no effect whatever, has it?—A. Reading them together, that clause has no effect.

Q. So this clause that I have read to you does not mean anything at all?—A. Not if a special tariff is issued; then the special tariff governs.

Q. Are not all tariffs to a particular town special tariffs?—A. No.

Q. What is a special tariff?—A. The words "special tar-
10233 iff" could cover commodity tariffs. That is a commodity tariff on oil.

Q. Yes.—A. You don't suppose for a minute, Mr. Kellogg——

Q. Now, don't lecture any more. Please answer my questions.—A. I will do so.

Mr. MARTYN. He was trying to do that.

Mr. KELLOGG. I am getting a little tired of your lectures.

Mr. ROSENTHAL. You keep right on answering the questions, even if you do tire Mr. Kellogg.

WITNESS. You ask your questions in such a double-barreled shotgun way that it is impossible to give you a specific answer, Mr. Kellogg.

Q. In your direct examination you explained, I believe, why the rate on oil from Toledo to Whiting was 12 cents and from Whiting to Toledo 10½ cents, did you not?—A. I gave some reasons.

Q. Or 10 cents.—A. I gave some reasons which, in my opinion, were the basis for that difference in rates.

Q. And your opinion, as I understand it, is this, that because the rate from Whiting, Indiana, to Cincinnati, is 11 cents, therefore the rate to Toledo, directly east, can not be greater than the rate to Cincinnati?—A. I said that if the Lake Shore road published a rate, or was party to a published rate, from Chicago or Whiting, of 11 cents, through Toledo to Cincinnati, that they could not legally have a higher rate in force than 11 cents from Chicago and Whiting to Toledo.

10234 Q. In other words, if the Lake Shore road was a party to any tariff which named a rate from Whiting to Toledo and also from Toledo to Cincinnati——A. You mean via Toledo to Cincinnati?

Q. Yes; and also a rate from Whiting to Cincinnati——A. Via Toledo?

Q. Yes; the rate could not be greater to Toledo than to Cincinnati?—A. I think we have stated that two or three times.

Q. Now, does the tariff which you refer to, from Whiting to Cincinnati, make a rate by way of Toledo?—A. I did not base my statement particularly on the Lake Shore. The Michigan Central was also involved in that theory.

Q. Does the Lake Shore make a tariff——A. What would hold good with the Lake Shore—you were asking me as to how I arrived at that conclusion.

Q. Please answer that question.—A. Have you got the Michigan Central tariff there that names a commodity rate?

Q. I am talking about the Lake Shore tariff.—A. Just a minute.

Q. Does the Lake Shore make a tariff through Toledo to Cincinnati?

Mr. MARTYN. Do you mean make a rate or publish a tariff?

Mr. KELLOGG. Publish a tariff making a rate. He knows what I mean.

A. The name of the Lake Shore Railroad is shown on the tariff which you hand me.

Q. Does that make a rate through Toledo to Cincinnati?—A. On the bottom of that tariff also appears the name W. H. Smith,

10235 C. F. T. B. (meaning chief of freight tariff bureau) of the L. S. & M. S. at Cleveland, showing that the Lake Shore & Michigan Southern Railway were named in this tariff, and I have a copy of a letter they sent to the Interstate Commerce Commission concurring in it.

Q. Now, Mr. Felton——A. You ask me if they named——

Q. I asked you if that tariff makes a rate on oil from Whiting via Toledo to Cincinnati. Now answer it yes or no, whether it does or not. A. I will have to read it over.

Q. You can give your reasons afterwards.—A. (After examining tariff handed witness by Mr. Kellogg.) It does.

Q. How?—A. Via the Lake Shore road, the Lake Shore road being indicated as a party to the tariff, and via the C. H. & D. road from Toledo south.

Q. Now, what rate does it make from Whiting to Cincinnati? What is the amount of the rate?—A. 11 cents.

Q. 11 cents a hundred. Point out the place where it makes an 11-cent rate.—A. On page 11 you will find, under the heading "Rates on oil of various kinds," between Chicago and stations named on pages 16, 17, and 18, South Bend, Indiana, and Cincinnati, 11.

Q. Very well. Between Chicago and Cincinnati. Does it say it shall be routed through Toledo?—A. That route is open along with a lot of others.

Q. Does not the tariff say on its face: "Notice. The publication of these rates does not imply that they will prevail from all points specified via all the lines parties hereto. The rates with the
10236 stations noted are simply in accordance with division sheets of individual lines." Doesn't that tariff provide that?—A. That notation is on the tariff.

Q. How do you make a rate, then, by way of Toledo?—A. On page 18 of the tariff I read this: "The rates to and from Chicago published in this tariff will apply to and from the following stations on the Lake Shore & Michigan Southern Railway." Under that heading I find Whiting, Indiana, and as the Lake Shore & Michigan Southern did not have its own rails to Cincinnati, of necessity it was obliged to use the rails of some other road, and as the C. H. & D. is shown as a party to that tariff, it thereby formed a line from Whiting, over the Lake Shore & Michigan Southern, to Toledo; thence over the Cincinnati, Hamilton & Dayton road to Cincinnati, Ohio.

Q. Is that the only line?—A. There may have been other lines.

Q. Then, what does this mean: "The publication of these rates does not imply that they will prevail from all points specified via all the lines parties hereto?"—A. I would not undertake to say what was in the mind of the man.

Q. Doesn't it mean exactly what it says?—A. You want me to show that the Lake Shore had percentages to Cincinnati via the C. H. & D., and I will do that after lunch.

Q. Does that mean what it says?—A. I don't know what that was put on there for.

Q. You could not say?—A. No, sir.

Q. So you say the rate could not be higher from Whiting to Toledo than from Whiting to Cincinnati? That is your proposition, is it?

10237 Mr. MARTYN. He said it could not legally be higher.

Q. Well, could not legally be higher, then. That is your legal opinion?—A. That is my opinion.

Q. And that is the reason the rate was made 10 cents from Whiting to Toledo, is it?—A. I gave that as my opinion on that tariff, and also the tariff of the Michigan Central Railroad, which specifically named a commodity rate of 10 cents on oil.

Q. Now, will you look at the Lake Shore & Michigan Southern tariff A–1555? On page 9 of that tariff does it name a rate of 10½ cents from Toledo to Cincinnati?—A. I have before me Lake Shore tariff I. C. C. A–1555.

Q. Does it name a rate of 10 cents from Toledo to Cincinnati, or is it 10½ cents?—A. 10 cents.

Q. 10 cents from Toledo to Cincinnati. What is the date of that tariff?—A. February 25, 1905.

Q. Now, is the Chicago, Cincinnati & Louisville Railroad a party to that tariff?—A. It is so shown on the first page.

Q. It is a party to that tariff, is it?—A. It is so shown; yes, sir.

Q. The Chicago, Cincinnati & Louisville road runs from Chicago to Cincinnati, doesn't it?—A. I understand they have a line between Chicago and Cincinnati.

Q. And its only connection with the Lake Shore is at Chicago, isn't it?—A. I imagine so, but they may have some other connection.

Q. Do you know of any other connection than Chicago?—A. The Chicago, Cincinnati & Louisville road to-day, I should say, was a considerably different road from what it was in 1905.

10238 Q. In 1905 it ran from Chicago to Cincinnati, didn't it?—A. I do not think it had any rails in Chicago in 1905.

Q. Well, it has to-day, hasn't it?—A. I don't know. I do not think it has. I think it uses some other road to get into Chicago.

Q. But it runs into Chicago, doesn't it?—A. No.

Q. Doesn't it run trains into Chicago?—A. I do not know. I have not been over the road and never have seen it, that I know of.

Q. Doesn't it run a line of road from Cincinnati to Chicago?—A. I told you I do not know.

Q. Operate a line of road from Cincinnati to Chicago?—A. If you would like to have me look at the Official Guide, I will be glad to do it and tell you what I find there.

Q. All right, sir. The Chicago, Cincinnati & Louisville.—A. (After examining Official Guide.) The Chicago, Cincinnati & Louisville is shown in the Official Guide as a line from Chicago to Cincinnati. I should say it uses, from the way the station lists appear, the rails of some other road to get into Chicago.

Q. Well, lots of other roads use other rails to get into the Chicago station, don't they?—A. I suppose they do; yes, sir.

Q. Does that make a rate of 10 cents from Toledo to Cincinnati, by way of Chicago, over the Lake Shore road and the Chicago, Cincinnati & Louisville road?—A. Not necessarily.

Q. Why doesn't it, just as much as the tariff you referred to to make a rate from Chicago to Cincinnati by the way of Toledo?—A. Speaking from a geographical standpoint, I should say
10239 that there was absolutely no comparison in the two examples.

Q. Is that the only reason you have? The tariff names both companies, doesn't it?—A. Yes; with this difference——

Q. Is there any restriction as to route?—A. Yes, sir.

Q. Where is it?—A. On the tariff.

Q. Name it.—A. Right here, sir. The only routes shown in the tariff which you put in my hands, from Toledo to Chicago—and I am reading from the information shown on page No. 9—is as follows——

Q. From Toledo to where?—A. From Toledo to Chicago, G. T. and L. S. & M. S.

Q. Well, that is to Chicago.—A. I know, but you asked me——

Q. That is the Lake Shore & Michigan Southern itself. I asked you if that made a rate to Cincinnati by the Lake Shore & Michigan Southern through Chicago over the Chicago, Cincinnati & Louisville roads to Cincinnati.—A. No; the tariff limits the application of the rate.

Q. Why does it?—A. Because it says so.

Q. To Cincinnati?—A. You asked me——

Q. Does that tariff limit it to Cincinnati?—A. You asked me as to Chicago.

Q. No; I did not.—A. Yes; you did.

Q. No; I asked you if that makes a rate to Cincinnati.—A. Please read the original question. You said via Cincinnati to Chicago.

Q. No; I said via Chicago to Cincinnati.

The following question was read: "That is the Lake Shore & Michigan Southern itself. I asked you if that made a rate to
10240 Cincinnati by the Lake Shore & Michigan Southern through Chicago, over the Chicago, Cincinnati and Louisville road to Cincinnati."

Q. Now, I will ask that question again.—A. I get the question now. I thought you put it the other way.

Q. No; I put it from Toledo to Cincinnati, through Chicago.—A. I could not say whether it does or not.

Q. Why doesn't it? It is a party to that tariff. Both companies are, aren't they?—A. Yes; it is a party to the tariff.

Q. Now, that is the same reason you gave for the rate applied to Cincinnati, through Toledo, that the company south of Toledo was a party to the tariff.—A. That is true.

Q. Then, why doesn't this tariff apply through Chicago to Cincinnati?—A. It could not be done, because the rate from Chicago to

Cincinnati is higher than the rate from Toledo to Cincinnati, and, therefore, you could not work through Chicago.

Q. You mean the rate from Toledo to Chicago was 12 cents, do you?—A. No; that was not my answer then. I said that the rate shown on this tariff from Toledo to Cincinnati is 10 cents.

Q. Yes.—A. The rate from Chicago to Cincinnati was 11 cents.

Q. Yes.—A. Consequently the Lake Shore road would not attempt to work through Chicago to get to Cincinnati.

Q. Why not?

Mr. ROSENTHAL. For the reason he has just given.

A. Because the rate from Chicago to Cincinnati is higher than the rate from Toledo to Cincinnati.

Q. Very well. Now, the rate from——

A. Therefore I infer—answering your question complete, if you will permit me to do so—that the C. C. & L. is shown here
10241 under the head of "Cincinnati" in order to afford the Lake Shore road opportunity to work out of Toledo in connection with some northeast and southwest road, and so make C. C. & L. delivery at Cincinnati.

Q. Isn't that the same reason why the C. H. & D. was shown on the other tariff through Toledo?—A. Yes; but I say that there is a straight route and a workable route (and if you want it I will get the information) over which traffic really moves from Chicago and Whiting to Cincinnati through Toledo and the C. H. & D. road.

Q. But the Lake Shore tariff which you have before you does not limit the route, does it, to Cincinnati?—A. But the rate application limits it.

Q. Where does the rate application limit it?—A. Because the rate from Chicago to Cincinnati is one cent higher than the rate from Toledo to Cincinnati, and because it is a railroad rule that you cannot work a low rate through a high-rate point.

Q. Well, let us see about that. Isn't it a fact that during the entire year 1906 the rate from Whiting to Toledo was 12 cents, only one cent more than the rate from Whiting to Cincinnati?—A. Illegally so.

Q. Well, it is a fact, isn't it?—A. The roads out of Chicago, giving way to the pressure of the Bureau of Corporations, put in an illegal rate to Toledo in order to placate them.

Q. And it is in existence yet, isn't it?—A. Yes; and it is illegal. The Lake Shore road cannot collect 12 cents a hundred on a carload of oil to-day from Chicago to Toledo, because it participates in an 11-cent rate through Toledo to Cincinnati, and I will go before the Interstate Commerce Commission on that proposition any day.
10242 Q. Oh, well, if you will attend to your testimony and not——A. You are asking the questions and I am answering them. They simply gave way to the pressure and slammed that rate in there without trying to see what the trouble was. Scared to death!

Q. Isn't it a fact that after the Bureau of Corporations made its investigation all of the rates from Toledo west, complained of in

this case, were taken out and other rates put in?—A. No. You are dead wrong on that.

Q. Were not the rates from Whiting raised, then?—A. The rates from Whiting were raised in a good many cases; yes, sir.

Q. To points east?—A. Yes, sir.

Q. And it was those discriminations that the independents complained of, wasn't it?

Mr. ROSENTHAL. No.

A. I don't know how far they complained of those particular rates.

Q. Did all the railroads pull out these rates to East St. Louis, to Evansville, to Grand Junction, and the rates from Chicago to Toledo, because they were afraid of the Bureau of Corporations?

Mr. ROSENTHAL. I think all of the railroads that were granted immunity against criminal prosecution by private arrangement with the Government, which was undisclosed, probably did.

Q. Will you answer the question?

Mr. ROSENTHAL. I don't know of a railroad that was in-
10243 dicted.

A. Oh, I couldn't answer the question.

Mr. ROSENTHAL. And the records in the various cases show that they were granted immunity. What they did under the pressure of that grant of immunity we do not altogether know.

Mr. KELLOGG. The more of that sort of talk you put into this record, Mr. Rosenthal, the worse it will be for you.

Mr. ROSENTHAL. When the time comes that you can not only control your own case, but undertake to control what I put in the record, then it is time for me to withdraw from the case, and I will do so whenever we reach that stage. You attend to your own knitting and I will attend to mine. [After a pause.] I do not hear any denial from the Government side of the table that these railway companies were granted immunity from criminal prosecution.

Mr. KELLOGG. I know nothing whatever about it. I haven't granted any road immunity or made any promises.

Mr. ROSENTHAL. You haven't the power. The Department of Justice did, as shown in the public history of this country, found in the records of this court, developed by his Honor Judge Landis when he sought to impose sentence on the Standard Oil Company a year ago, and when, very much to his surprise, he found a secret arrangement had been entered into between the Department of Justice and the Chicago and Alton and the various other roads concerned, granting them immunity.

Mr. KELLOGG. Are you through?

Mr. ROSENTHAL. Yes, sir; I am through now.

Mr. KELLOGG. Just go on and complete your speech. Better put that into the record—the arrangement and everything.

10244 Mr. ROSENTHAL. Now, I undertake to say that the Circuit Court of the Eighth circuit will hold that that is ten thousand times more material to the issues that are involved than an opinion by

Mr. Prouty, in a case in which Fred G. Clarke and the Lake Shore Railroad and others were concerned, when the Standard Oil Company was not a party, when 22 pages of the opinion is taken up with a discussion of alleged facts, and when the last paragraph of that opinion, after having discussed those alleged facts, announces the only legal principle that is there involved, namely, that the Interstate Commerce Commission after all had not any control of the whole subject-matter and that Mr. Prouty was just stating a hypothetical case.

Mr. KELLOGG. Are you through, or would you like to make a speech on some other subject? If you would, put it in here.

Mr. ROSENTHAL. Somewhere along the line, if you will give me the opportunity, I will be very glad to institute another comparison between what I state in the record here and what you have put into the record.

Mr. KELLOGG. Now, we won't take any more time listening to that kind of speeches.

Q. You were the general freight agent of the Chicago & Eastern Illinois for a number of years, were you?—A. I was.

Q. And you left that road at what time?—A. Either in May or June—I think it was May—1897. You are speaking of the C. & E. I. now?

Q. Yes.—A. 1897.

Q. Was the Chicago & Eastern Illinois Railroad Company
10245 a party to the Chicago & Ohio River Traffic Association?—A. At what time?

Q. Wasn't it a charter member of that association?—A. I think it was.

Q. It was always a member of that association, during all the years you were with the company?—A. Yes, sir.

Q. And is yet, as far as you know, isn't it?—A. So far as I know.

Q. You have been to meetings of that association, have you, many times?—A. I have.

Mr. ROSENTHAL. That is, while you were C. & E. I. general freight agent.

Mr. KELLOGG. That is what I am referring to. While you were general freight agent of the C. & E. I. road, or connected with its traffic department.

WITNESS. Yes, sir; that is what I am referring to.

Q. It participated in making the rate of 11 cents a hundred from Chicago to Cincinnati and from Chicago to Evansville, didn't it?—A. Evidently it did.

Q. And during all of those years and to the present time it was and is a party to that tariff?—A. Yes, sir; from Chicago.

(A recess was here taken until 2 o'clock p. m., at which time the cross-examination was resumed.)

WITNESS. I have one or two questions to answer more specifically, that you asked me this morning, Mr. Kellogg, if you have no objection.

Mr. KELLOGG. No, sir.

WITNESS. I would like to have tariff 46 of the Chicago and Ohio River freight committee. You asked me a question about
10246 that which I could not answer then, but which I can answer now.

Mr. KELLOGG. In relation to what subject?

WITNESS. You asked me what this clause meant—the publication of these rates—that is, the rates from Chicago to the Ohio River, Cincinnati, Louisville, and Evansville, does not imply that they will prevail from all points specified via all the lines parties hereto. The rates, with the exceptions noted, are simply in accordance with division sheets of individual lines. I have a division sheet issued by the Lake Shore road showing that they had per cents from Chicago to Cincinnati via Toledo and the C., H. & D. Railroad. Now, as you set in opposition to that theory, if you please, the rate from Toledo through Chicago and over the C., C. & L. to Cincinnati, I made inquiries along those lines and I find there are no per cents from Toledo through Chicago and C., C. & L. Therefore I believe we are bound to reach the conclusion that there was a workable route from Chicago via Toledo and the C., H. & D. to Cincinnati, and there was no workable route from Toledo via Chicago and the C., C. & L. to Cincinnati.

Mr. KELLOGG. Let me ask you a question right there.

By Mr. KELLOGG:

Q. Did you look to see if there was a division sheet from Toledo via Goshen and South Bend to Cincinnati?—A. No, sir.

Q. There is, is there not?—A. I do not know.

Q. Will you look and see?—A. If that is so I will tell you.

Q. Then will you see if the rate from Toledo to Goshen and South Bend is not higher than the rate from Toledo to Cincin-
10247 nati through Goshen and South Bend?—A. I will make those inquiries; yes, sir.

Q. The tariff will show the rate.—A. That means I can not answer your question until I ascertain about the division sheet.

Q. But you can tell me what the rate from Toledo to Goshen and to South Bend is?—A. Yes, sir. [After referring to tariff.] The rate from Toledo to Goshen, as shown on this tariff, is 11 cents per 100 pounds.

Q. What is the rate to South Bend?—A. 12 cents per 100 pounds.

Q. The rate from Toledo to Cincinnati through those points is 10 cents, isn't it?—A. I don't know.

Q. Well, if there is a division sheet.—A. If there is a division sheet and the Lake Shore say it is a workable route; yes, sir.

Q. Now, will you look and see?—A. Now, one other question you asked me to look up. I stated with respect to an exhibit that you handed me this morning that I did not question the correctness of the rate from Toledo to Beecher Falls as shown and in accordance with the tariff I saw.

Q. With the Lake Shore tariff?—A. Yes; but I said I could probably find a lower rate, which I have done.

Q. By what tariff?—A. I used the same Lake Shore tariff to Nashua, New Hampshire. That makes a Boston rate of 27 cents. Then I have got a tariff here, filed with the Interstate Commerce Commission, from Nashua, New Hampshire, to Portland, Maine, of 9 cents.

Q. That would make 33 cents.—A. Then I have got a tariff
10248 issued by the Maine Central Railroad on oil and a number of other things that names a 13-cent rate on oil from Portland to Beecher Falls, and from that I find that the rate from Toledo to Beecher Falls, as shown in the Government exhibit, is not correct on the theory of the lowest combination of locals without using the tariff authority that I showed the still lower rate in my exhibit.

Q. Very well, but it is correct according to the Lake Shore tariff?—A. It is correct according to that one particular tariff; yes, sir.

Q. Now, on the other tariff that you named what was the rate?—A. 49 cents against your rate of 50 cents.

Q. 49 cents as against the rate you claim the Grand Trunk made, of 27 cents?—A. Oh, there is another combination. You asked me if I would admit the verity of your rate.

Q. Over the Lake Shore road?—A. Over the Lake Shore road.

Q. And that is correct, is it?—A. No; because here is a rate over the Lake Shore road of 49 cents.

Q. And another combination?—A. Yes, sir; still another.

Q. But the Lake Shore road combination that we gave was correct?—A. Correct according to your tariff authority, but I can make a——

Mr. ROSENTHAL. Correct according to the combination made by the Government?

WITNESS. Yes.

Q. You can make a rate one cent lower around through Portland and Nashua and some other place?—A. Around through Nashua and Portland.

10249 Q. To Beecher Falls, Vermont?—A. And I have only had a few minutes this noon to work that up. Now then, in regard to these distances. In looking over your——

Q. I will come to that in a minute.—A. All right, sir.

Q. We have started on another subject.

The following question, asked immediately before the noon recess, and the answer thereto were read: "And during all those years and to the present time it was and is a party to that tariff [referring to the C. & E. I.]?—A. Yes, sir; from Chicago."

Q. That is, the C. & E. I. since at least 1892 have had a published tariff rate filed with the Interstate Commerce Commission, from Chicago to Cincinnati, Louisville, Evansville, and certain other points, of 11 cents a hundred pounds on oil?—A. They were party to a tariff naming that rate; yes, sir.

Q. That was the Ohio River Association tariff?—A. Yes, sir.

Q. For instance, Through Freight Rates No. 46, and known as the C. E. Fulton Tariff, I. C. C. No. 81, is one of the tariffs you refer to?—A. I. C. C. No. 81 is one of the tariffs to which I refer; yes, sir.

Q. Known as tariff No. 46?—A. Yes, sir; that is correct.

Q. That named a rate of 11 cents on oil from Chicago to Evansville, Cincinnati, Jeffersonville, Brighton, and Lawrenceburg, did it not?—A. The tariff so reads.

Q. And was a commodity tariff?—A. Was that from Chicago? Is that what you ask?

Q. From Chicago.—A. That was a commodity tariff—commodity and class.

Q. Commodity and class both, but commodity so far as oil
10250 was concerned?—A. Yes, sir.

Q. And one whole page of that tariff is devoted to the oil, isn't it—a single oil rate of 11 cents?—A. That is true, to the oil and descriptions of various rules.

Q. Now, that tariff and the other tariffs in the series naming rates from 1892 down to the present time are well-known tariffs, aren't they, to all railroads?—A. Yes, sir.

Q. And are in your hands as traffic manager of the Standard Oil Company?—A. Yes, sir.

Q. And have been in your hands ever since you have been connected with that department?—A. I have known of those tariffs since 1892; yes, sir.

Q. And the Standard Oil Company has known of them ever since you have been with them?

Mr. ROSENTHAL. Whom do you mean by "the Standard Oil Company?"

Q. That you are connected with.

Mr. ROSENTHAL. You mean Mr. Felton?

Q. The Standard that you are connected with.—A. My office in New York has known of that tariff; yes, sir.

Q. The Standard Oil of Indiana have had them?—A. I understand they have.

Q. Now, you testified that it had been customary for many years for railroads to make Chicago rates apply to the Chicago switching district including Whiting, did you?—A. I did.

Q. And these tariffs applied to Whiting, did they?—A. Under the general scope of the application of Chicago rates, that is correct.

Q. And since July 6, 1903, the Chicago and Eastern Illinois
10251 have published an application sheet specifically making tariff No. 46, the 11-cent tariff to Evansville and Cincinnati, applicable to Whiting, have they not?

Mr. ROSENTHAL. In the absence of a through tariff naming a lower rate.

A. I would like to look at the application sheet before I answer.

Q. I show you petitioner's Exhibit 520. That shows Whiting on the C. T. T. Railway?—A. That applies Chicago rates from a number of points on the Terminal Transfer Railroad, commencing with Blue Island, Illinois, and ending with Whiting, Indiana, except where combination of local rates or published through rate is lower, in which case such lower rate will apply.

Q. Did it specifically mention the tariff No. 46 which you have described as making a rate from Chicago to Evansville and Cincinnati and other points?

Mr. ROSENTHAL: It shows for itself, doesn't it?

A. It does.

Q. Do you know of any published through rate lower than this rate?—A. There was one.

Q. When?—A. I think it is in the record in this case.

Q. What is it?—A. There was an 8¼-cent rate.

Q. Published rate filed with the Commission?—A. The testimony in this case is——

Q. No; I am asking you if there was any published tariff rate lower than that filed with the Commission since 1892.

Mr. ROSENTHAL. That is not what the application sheet says.

Q. Well, I asked you that question and you can answer.—

10252 A. Now, will you kindly give me that question?

The following question was read: "No; I am asking you if there was any published tariff rate lower than that filed with the Commission since 1892."

A. There was an 8¼-cent rate, but it was not filed with the Commission.

Q. And it is not listed in this list of tariffs contained in petitioner's Exhibit 520—the application sheet?—A. This application sheet——

Q. Well, answer whether it is so listed or not.

Mr. ROSENTHAL. What is the question?

Mr. KELLOGG. I ask him if it is listed in that Exhibit 520, the 8¼-cent tariff.

A. The application sheet bears a whole lot of numbers that I have not checked up with the 8¼-cent rate.

Q. Well, check them over.

Mr. ROSENTHAL. No; because the rate is from Whiting. Of course it does not require any application sheet. The rate itself is from Whiting, Mr. Kellogg.

Q. Is the tariff you refer to, which was not filed with the Commission, the 8¼-cent tariff, listed or mentioned by number in that application sheet petitioner's Exhibit 520? That is the question.—A. Just give me a moment to glance over this, and I will tell you.

Q. Yes, sir.—A. It is not.

Q. Now, you were the assistant general freight agent of the C. & E. I. road when the first rate of 8¼ cents was made, petitioner's Exhibit 589, on April 22, 1892, I believe [handing witness

10253 paper].—A. I was, and the tariff so shows.

Q. Now, is this the tariff which you say you were advised by Mr. Lyford, the counsel of the C. & E. I. road, it was not necessary to file with the Interstate Commerce Commission because it made a rate from Whiting, Indiana, through Illinois, and back to Evansville, Indiana?—A. I did not specifically say that.

Mr. ROSENTHAL. You mean you did not testify that the advice was limited to any one tariff?

WITNESS. That is correct.

Q. Well, is this tariff included in the advice?—A. 1892 is 16 years ago.

Q. Well, you testified that Mr. Lyford advised you it was not necessary to file a tariff from Whiting into Illinois and back into Indiana.—A. I testified that away back there—I could not recall the date—I had such advice from the general counsel of the C. & E. I. road, and I assumed that that tariff was not filed in accordance with those advices.

Q. Now, you say, I believe, that the reason you did not want to file the tariff was so that your competitors—competitor railroads—could not find it.—A. It was on that basis that the inquiry was put to Mr. Lyford when his advice was sought.

Q. Well, is that the reason you did not file this tariff?

Mr. ROSENTHAL. You mean with respect to tariffs generally?

WITNESS. With respect to tariffs generally.

Q. I mean this particular tariff. Is that the reason you did not file this particular tariff?—A. I will have to say in answer to
10254 that that I think it was. It is too far back for me to remember specifically.

Q. Now, is that the reason the company did not file any of the other succeeding tariffs down to the time you refer?

Mr. ROSENTHAL. There isn't any proof in this case upon that, is there, as to whether they were filed or not?

Mr. KELLOGG. Well, we will see.

A. Mr. Kellogg, that is a long time ago. I think we worked under those instructions up to the time I left the C. & E. I. Railroad.

Q. And none of these tariffs—the 8¼-cent tariffs—were ever filed with the Commission so far as you know, were they?

Mr. ROSENTHAL. Which tariffs?

Mr. KELLOGG. The 8¼-cent tariff from Whiting to Evansville.

Mr. ROSENTHAL. I think before Mr. Felton answers a question of that kind the tariff should be shown him.

Q. I show you all of them. They are all here. Petitioner's Exhibit 522——

Mr. MARTYN. Those were issued after he left the road, were they not?

Mr. KELLOGG. Wait a moment. Petitioner's Exhibits 521, 522, 589, 590, and 591. [Handing papers to witness.]

A. The only tariff of the number that you hand me that bears my name, consequently the only tariff that was issued while I was with the C. & E. I. road, is tariff G. F. D. 5346, effective May 2nd, 1892. Of course I could not say what was done, or give the reason for what was done, after I left the Chicago & Eastern Illinois Railroad.

10255 Q. But up to the time you left, that is the reason why the tariffs were not filed.—A. If my memory serves me now, up to the time I left the C. & E. I. road we worked under Mr. Lyford's advices in that respect.

Q. Did you have these 8¼-cent tariffs in your office in New York, the numbers of which I have given you and you have just looked

at?—A. I don't know whether they were all there, but some of them were there.

Q. You knew of the tariff?—A. Yes, sir.

Q. Ever since you have been with the Standard Oil Company?—A. No, I do not think that my attention was specifically called to that rate until my interview with Mr. Garfield.

Q. When you left the C. & E. I. road you knew of the 8¼-cent rate?—A. Oh, I may have known of it, but not in a way that I carried that specific knowledge with me.

Q. Now, you say you were anxious to keep the knowledge of this rate from your competitors, and you named the other day the Illinois Central running down through Illinois, and the Big Four running down through Indiana? Is that correct?

Mr. ROSENTHAL. He hasn't said that.

A. I don't think I made that statement just as you put it to me now.

Q. Did you wish to keep the knowledge of this tariff from your competitors?—A. I said that we prepared tariffs at that time from Indiana, through Illinois, back into Indiana, and did not file them with the Interstate Commerce Commission, for the purpose of
10256 keeping the information they contained from our competitors.

Q. Was this oil tariff one of them?—A. I think it was, but I do not remember specifically.

Q. Now, what competitors did you wish to keep the knowledge of this 8¼-cent rate from?—A. There were competing lines running from Whiting, Indiana, to Evansville, Indiana, without going into the State of Illinois.

Q. What were these lines?—A. The Pennsylvania, for example, could have taken traffic that way.

Q. Take it on the Pennsylvania from Whiting to what point?—A. They could have taken the business via Indianapolis, and over the Indianapolis & Vincennes road to Vincennes, Indiana, and then connecting with the Evansville & Terre Haute Railroad, or they could have taken it via Logansport, Terre Haute, Indiana, and the Evansville & Terre Haute Railroad. The Monon could have taken it, and the Pennsylvania could have taken the business from Whiting, Indiana, to Jeffersonville, and then over what was then known as the Louisville, St. Louis & Evansville Railroad direct into Evansville, Indiana, without touching the E. & T. H. road.

Q. Those lines were parties to the Chicago & Ohio River Traffic Association, were they?—A. They were.

Q. During those years did you ever have any knowledge that they were cutting the 11-cent rate in any way?—A. I don't remember whether they were or not.

Q. You have no recollection of it?—A. I have no recollection one way or the other.

Q. During all the years from 1892 down to the present time have you any knowledge that any one of the roads competitive with

10257 the C. & E. I. were making a rate less than 11 cents to the Ohio River from Whiting?—A. I have no information on the subject, and no recollection of it.

Q. Well, oil has been shipped from Whiting, Indiana, since you have been connected with the company, over those lines to the Ohio River, hasn't it?—A. You mean since I went with the Standard?

Q. Yes.—A. From Whiting to the Ohio River?

Q. Yes.—A. Oh, yes.

Q. Paying 11 cents?—A. Over which lines do you mean?

Q. Over the Pennsylvania and the Monon, over any of these lines you mention except the C. & E. I.—A. I could not say without——

Q. You don't know what they paid?—A. I have not investigated that movement.

Q. Do you know of any of these tariffs the numbers of which I gave you naming the 8½-cent rate from Whiting to Evansville, ever having been filed with the Interstate Commerce Commission?—I do not know one way or the other after I left the C. & E. I. road.

Q. When you left the C. & E. I. road you knew they had not been, didn't you?—A. I have so testified.

Q. Did you ever make any inquiries during the time you have been connected with the Standard as to whether they were filed with the Interstate Commerce Commission?—A. I have not.

Q. They do not bear the I. C. C. number?—A. I would like to see them, if you please.

(Mr. Kellogg handed papers to the witness.)

WITNESS. They do not bear any I. C. C. numbers.

10258 Q. Now, I notice the tariff that you put in, the one in 1892, contained the following clause: "This rate applies only from C. & C. T. tracks at Whiting and must not be used for points beyond Evansville." Why did you put that in the tariff?—A. The tariff speaks for itself.

Q. And what does it mean?—A. It says the rate is not to be used on traffic for points beyond Evansville.

Q. Well, why was that?—A. I do not recall now whether I was simply asked for a rate to Evansville and put that limitation on it.

Q. Well, that was to prevent its being used for a shipment through south of Evansville, wasn't it, or beyond Evansville into another State?—A. That is the idea that is set forth in that tariff; yes, sir.

Q. Wherever it says "proper"—it says "Evansville proper" on that tariff—does that mean the same thing?—A. It does.

Q. Now, I notice that that word "proper" remained in this tariff and the successor tariffs until December 10, 1897, when the word "proper" and the clause I referred to were omitted from the tariff. Is that true?

Mr. ROSENTHAL. Do not the tariffs themselves show?

A. The tariff you have placed before me does not bear that notation.

Q. That is tariff petitioner's Exhibit 591?—A. That is correct.

Q. Why was that left off?—A. What was the date of that issue?

Q. 1897.—A. What month?

10259 Q. December, 1897.—A. I was in the employ of the Lake Shore & Michigan Southern Railway at that time, and am unable to answer your question.

Q. If it was in before to prevent its use on interstate traffic, and if it was taken out, what would it indicate?

Mr. ROSENTHAL. The witness has not testified to anything of that kind. Read the question to the witness again.

(The question was read.)

Mr. ROSENTHAL. I do not understand that the witness has so testified, and I do not understand that he is under any obligation to speculate as to the whys and wherefores of it.

Q. Well, was it put in there originally to prevent the tariff being used for what you suppose to be interstate traffic going beyond Evansville?—A. The tariff issued in 1892 states that the rate named therein is not to be used on traffic going beyond Evansville.

Q. Going beyond Evansville would be into another State, wouldn't it?—A. Not necessarily.

Q. Well, you thought that would be interstate traffic, didn't you, and you put that clause in there for that purpose?—A. I do not know, Mr. Kellogg, why that was put on. That was 16 years ago. 16 long, busy years have intervened.

Q. Now, after the word "proper" was taken out, and since your connection with the Standard Oil Company, has that rate been used on shipments going beyond Evansville, consigned to points beyond Evansville, into the States south of that?

Mr. ROSENTHAL. I object to that upon the ground that that is not cross-examination, and, if anything, it is part of your

10260 own case.

Q. Please answer.—A. As I recall there is some testimony submitted by the Government to that effect.

Q. I want you to testify as to that subject, not what the Government shows.

Mr. ROSENTHAL. Read the question again, will you please?

The question was read to the witness as follows: "Now, after the word "proper" was taken out, and since your connection with the Standard Oil Company, has that rate been used on shipments going beyond Evansville, consigned to points beyond Evansville into the States south of that?"—A. I understand that it has.

Q. During the time you were with the C. & E. I. road how was this oil waybilled under this 8¼-cent rate?—A. I do not remember.

Q. Did it show the 8¼-cent rate or the 11-cent rate?—A. I do not know, Mr. Kellogg.

Q. You have no recollection?—A. Absolutely none.

Q. Since you have been cvonnected with the Standard Oil Company it was waybilled at 11 cents, wasn't it, when it was going beyond Evansville?—A. I had nothing to do with the——

Q. I am asking you about the fact.—A. I do not know of my own knowledge.

Q. Well have you seen the waybills?—A. In regard to that transaction I only know what was testified to by the Government witnesses in Washington.

Q. You saw the waybills then, didn't you?—A. Whatever documents were put in there I saw or listened to.

10261 Q. How was the freight on that oil settled for by the Standard Oil Company since you have been connected with that company?—A. I had nothing to do with that settlement and can not speak of my own knowledge.

Q. I have not asked you if you had anything to do with the settlement; I have asked you how the bills were presented and how they were paid.

Mr. ROSENTHAL. He says he does not know.

A. If you insist on a specific answer I will have to say I do not know, because I had nothing to do with it.

Q. Well, have you investigated to find out?—A. Nothing except what has been offered in testimony in this case.

Mr. ROSENTHAL. By the Government?

WITNESS. By the Government.

Q. Have you never looked at the bills or inquired into the manner of the settlement by the Standard Oil Company since this investigation?—A. I do not recall that I have investigated that thing beyond the evidence as submitted by the Government.

Q. Haven't you talked with Mr. Bogardus about it?—A. I do not recall any conversation.

Q. You recall no conversation with Mr. Bogardus or with any official or officer or agent of the Standard Oil Company of Indiana about the manner of the settlement for the freight on this oil shipped under that 8¼-cent rate?

Mr. ROSENTHAL. Except counsel.

Mr. KELLOGG. I will exclude counsel, of course.

A. Really I do not remember my conversation.

10262 Q. You have been looking up this case for the last year, haven't you?—A. I have been working on the general case more or less.

Q. And these shipments of oil from Whiting to Evansville under this 8¼-cent rate was one of the subjects inquired into by the Government?—A. It was.

Q. And you say that you have never had any conversation or made any investigation as to how that oil was settled for or the freight paid by the Standard Oil Company of Indiana?

Mr. ROSENTHAL. Beyond what the Government proof shows.

Q. Beyond what the Government proof shows.—A. I do not recall that I had any conversation with——

Q. Well, you would recall if you inquired into the manner of settlement, wouldn't you?

Mr. ROSENTHAL. I object to that. The question is whether he does recall it, not whether he would if he had. There is no objection to the

witness testifying to what as a matter of fact he does or does now know.

A. I assumed the Government testimony was correct, and I do not recall that I——

Q. I show you Government's Exhibit 526, showing a statement of billing of oil for two weeks during August, 1904, showing the rate from Whiting to Evansville to be 11 cents a hundred. Have you ever seen those?—A. I do not recall ever having seen these before.

Q. Did you see the originals of which those are copies, which were in the office of the Interstate Commerce Commission at the
10263 time the testimony was taken in Washington?—A. I do not remember whether I looked at them there ro not.

Q. Is it not a fact——A. May I say those sheets are matters that would pass between the Chicago & Eastern Illinois in Chicago and the Standard Oil of Indiana office.

Q. Yes; but from 1904 down you were an officer or agent or employe of the Standard of Indiana?—A. I was an employe.

Q. It is your business to look after the traffic, isn't it?—A. Mr. Bogardus is in direct charge of the traffic of the Indiana company.

Q. Now, is it a fact that once in two weeks, or about that, the railroad company rendered to the Standard of Indiana statements showing the date of shipments, the car numbers, the weight, and the rate to be 11 cents a hundred pounds from Whiting to Evansville, and that on those statements the Standard figured up the amount of the rate on oil going to Evansville or beyond at a different rate, to wit, 8½ cents and 6 cents a hundred, and paid that rate?

Mr. ROSENTHAL. Do you know anything about it?

A. I had nothing whatever to do with that.

Q. I am not asking you if you had anything to do with it. I am asking you if that is the fact.

Mr. ROSENTHAL. He cannot testify to it unless he had something to do with it. He cannot testify to that as a fact unless he has personal knowledge of it.

Q. Is that a fact?—A. I know nothing about it other than what was testified to at Washington.

Q. As traffic manager you never have looked into that question?—A. No, sir; that was handled by Mr. Bogardus; that was his duty.

Q. And yet this case has been on trial for more than a year,
10264 and that has been one of the important points in this railroad testimony?

Mr. ROSENTHAL. Oh, that has not been a point of any consequence at all.

A. I assumed that the Government, presenting, as they did, or claiming to present, as I listened to the testimony, official statements of the C. & E. I. road, I assumed that testimony was correct and accepted it as so.

Q. Well, do you accept the proposition that the Standard Oil had those statements?

Mr. ROSENTHAL. It is not for Mr. Felton to accept or reject a proposition of that kind.

A. I have not handled them.

Q. Did you ever obtain the information from anybody that the Standard Oil had those statements showing oil billed at 11 cents?—A. I assumed that was correct on the Government's testimony, and I do not recall——

Q. I am not asking you whether you recall it. I am asking you whether you found out the Standard did get such statements.

Mr. ROSENTHAL. He just said he did not know anything about it.

Q. Do you swear you don't know anything about it, whether they got those or not?

Mr. ROSENTHAL. Why, he is under oath now. Anything he is testifying to he is swearing to.

A. I say, to the best of my recollection, I have never investigated or discussed that subject.

Q. Do you know whether the Standard Oil received such statements?

10265 Mr. ROSENTHAL. I object to that. He has already answered that he does not know anything beyond what the Government witnesses have testified to in the hearing heretofore.

Mr. KELLOGG. Now, I wish the witness to answer this question.

Mr. ROSENTHAL. But I insist that he has already answered that specific question, put in just that way.

The following question was read: "Do you know whether the Standard Oil received such statements?"—A. Only by the hearsay or the testimony that has been given.

Q. What hearsay?—A. The testimony at Washington.

Q. You know nothing from any agent or employe of the Standard Oil Company of Indiana?—A. I do not recall that I ever discussed that with anybody. I assumed the statement was correct.

Q. And you never heard any statement about it from the Standard of Indiana or any employe?—A. I do not recall that that has ever been a subject of discussion with me or anybody else. That was a duty and a charge and a responsibility that rested entirely with the man in direct charge of the traffic of the Standard Oil of Indiana.

Q. Whose duty was it?—A. Mr. Edgar Bogardus is in charge of that traffic.

Q. Mr. Edgar Bogardus had charge of the manner of settlement for this oil, had he?—A. He had.

Q. And he would know whether those statements were received or not?—A. You will have to ask him about that.

10266 Q. Well, is it his business to have charge of it?—A. Yes, sir.

Q. It is? What rate has the Standard Oil paid for shipments from Whiting to Evansville during the time you have been connected with the Standard Oil Company?—A. I could not say in detail.

Q. Well, say generally.—A. I have known that there was an 8¼-cent rate in from Whiting to Evansville, but I had nothing whatever to do with the payment of freight charges.

Q. Did the Standard of Indiana pay 11 cents on any of that oil?—A. I do not know.

Q. Did you ever hear that it did?—A. Neither one way nor the other.

Q. What is your business in connection with obtaining these rates on the Chicago & Eastern Illinois and other roads?—A. Oh, I have to do with freight matters generally.

Q. Well, you assume, I suppose, that they pay the freight according to the rates you get, do you?—A. No; I do not get all the rates used by the Indiana company by a very large number.

Q. Will you please produce, Mr. Felton, the statements of billing for oil shipped by the Standard of Indiana to Evansville proper and to points beyond since you have been connected with the Standard Oil Company, or, say, since 1903? Will you please do so?—A. If they are in existence.

Q. Will you make a search and see if they are in exist-
10267 ence?—A. I will, sir.

Q. I wish specifically for the statements of billing, one of them dated August 31, 1904, marked C. V. 1309, and the collection vouchers No. 1309 connected with it, for the payment of freight charges on the oil in that statement, and each of the other statements during said time. Will you produce those?—A. I will make search for them; if they can be found; yes, sir.

Q. If they can not be found, please produce the books and statements showing the freight paid. That office is here in the city, is it?—A. It is; yes, sir.

Q. And will you please have the search instituted at once, so I can have this before you leave the stand?—A. Will you make a note of that, Mr. Martyn?

Q. Do you know of any other rate except this 8¼-cent rate and the 11-cent rate from Whiting to Evansville during that time?—A. The same testimony in Washington, to which I referred, mentioned a 6-cent rate.

Q. Have you any tariff for a 6-cent rate?—A. I have not.

Q. Have you ever had any?—A. I have not.

Q. Have you ever known of any?—A. I have not. I have never seen a 6-cent tariff.

Q. Have you ever known of any such tariff?—A. No, sir.

Q. Do you know whether any such tariff ever existed?—A. I do not know whether it did or not.

Q. Did you ever have any conversation with the C. & E. I. officials about that 6-cent rate?—A. I don't think I ever did.

Q. Or any conversation with any of the officials or agents of the Standard Oil Company of Indiana about that 6-cent rate?—A. Not that I recall; I assumed that the explicit testimony, with the collec

tion vouchers, submitted by the Government at Washington, was complete, and as far as I was concerned I dropped it.

Q. Well, were they correct, so far as you know?—A. I do not know.

10268 Q. Did the Government produce any tariff? The testimony showed there was no tariff.—A. The Government did not produce any tariff covering 6 cents.

Q. Was oil settled for by the Standard of Indiana at a 6-cent rate, going to Evansville and beyond?—A. The Government showed that it was.

Q. Well, I ask you if it was.—A. I don't know of my own accord.

Q. You never inquired into it?—A. No, sir.

Q. Never made any investigations?—A. I do not recall that I have ever discussed the question of the settlement of those bills.

Q. Or whether the oil was shipped at a 6-cent rate, or 8¼?—A. I accepted the Government testimony as being correct in that respect.

Q. I show you petitioner's Exhibit 529, which is a waybill of the C. & E. I. road for a carload of oil. Were waybills of that kind issued on the shipment of this oil?—A. Why, that is a regular form of a Chicago & Eastern Illinois waybill. You ask me if that was the kind of waybills issued. I have nothing to do with the C. & E. I. waybills.

Q. What did you mean by the oil consigned from Whiting, through Evansville, to points beyond?—A. I did not get that question, Mr. Kellogg.

Mr. ROSENTHAL. You asked him that before.

Mr. KELLOGG. Perhaps I did. I guess I did ask him that.

10269 Q. Referring to your Exhibit 166, you give a rate from Toledo to Evansville of 13 cents, and compare your proportion of it with the rate from Whiting, Indiana, at 8¼ cents, do you not?—A. That exhibit was prepared for the purpose of comparison.

Q. Now, when was that 8¼-cent rate taken out by the railroad company?—A. I do not know.

Q. Was it not December 1, 1905?—A. I could not say without checking up the tariff, Mr. Kellogg.

Q. Well, about that time, wasn't it?—A. I think it was; yes, sir.

Q. And since that time the rate has been 15 cents?—A. No.

Q. I mean since that time the rate has been 11 cents from Whiting to Evansville?—A. I think so.

Q. Now, beginning with 1900, the rate from Toledo to Evansville was 15 cents instead of 13, wasn't it?—A. I so understand.

Q. In other words, in 1900 all of the rates on oil from Toledo to Chicago, Evansville, and western points were raised 2 cents a hundred, were they not?—A. I understand they were; yes, sir.

Q. But the rates on oil going east were not raised, from Whiting?

Mr. ROSENTHAL. I think we have gone into that very fully.

A. The Chicago & Ohio River Traffic Association did not advance the rate to the Ohio River at that time, as I remember.

Q. In other words, in 1900 the rates on other products from Whiting east were generally raised?—A. I think not to the Ohio River. I think there was no change in any commodities.

10270 Q. Toledo and eastern points——A. Do not add to your first question, please. I think, as I recall, on January 1, 1900, there was no advance in any of the commodity rates from Chicago to the Ohio River, as published by the Chicago & Ohio River committee.

Q. But there was an advance from Chicago and Whiting and other points east to those points?—A. There were quite generally commodity advances in the Central Freight Association territory.

Q. Leading east from Chicago?—A. Well, they could not be advanced where they came in competition with the commodity rate, Chicago to the Ohio River.

Q. Were they advanced, leading east from Chicago to Toledo and other points?—A. I do not know, sir. I would have to inspect the tariffs.

Q. The rates on the C. & E. I. from Whiting were not advanced?—A. As I recall, the oil rates from Whiting to points on the C. & E. I. and E. & T. H. roads were not advanced at that time.

Q. But the rates from Toledo to Evansville were advanced in 1900 to 15 cents?—A. As I recall, there was an advance of 2 cents a hundred from those points.

Q. Your proportion of that 15-cent rate, on the same advance, would be greater than your proportion of the haul from Whiting to Evansville, wouldn't it?—A. Those figures would work out differently on the basis of a 15-cent rate.

Mr. ROSENTHAL. If the percentages remained the same.

Q. The percentages did remain the same, didn't they?—A. I expect they did.

10271 Q. So that your proportion from Toledo to Evansville would be greater than your entire haul from Whiting to Evansville?—A. You say my proportion. I was not on the C. & E. I. road at that time.

Q. Well, the proportion of the C. & E. I. road, then.—A. On the basis of a 15-cent rate with the same divisions, on which that statement as an example has been prepared, you are correct.

Mr. ROSENTHAL. You had better figure that out before you answer that question.

A. Of course, 50 per cent of 15 cents would be greater than 50 per cent of 13 cents. My exhibit was prepared to show the policy that I worked on when I was on the C. & E. I. road. I show the rate from Whiting.

Q. But the C. & E. I. did not get all of the rate from Whiting. It had to pay $3 a car to the C. T. Company.—A. It absorbed the $3 a car.

Q. That would be about ¾ of a cent per hundred?—A. Just about.

Q. So, taking out that ¾ of a cent a hundred, after the rates were raised in 1900 your proportion, or the proportion of the C. & E. I., of

the haul from Toledo to Evansville would be greater by nearly a cent, or about a cent a hundred pounds, than all it received on the haul from Whiting to Evansville?—A. I have not figured it; but the proportion of course, would be greater under a 15-cent rate than it would be under a 13-cent rate.

Q. I show you a billing order, defendants' Exhibit 165,
10272 from Kankakee, Illinois, to East St. Louis on oil of 6 cents per hundred pounds. That was the billing order issued by the Illinois Central road, was it?—A. It so reads; yes, sir.

Q. Now, this purports to have been issued December 31, 1898. When did you first hear of this billing order?—A. The first recollection that I have of any knowledge of that rate was when Mr. Page mentioned it in his statement before Mr. Garfield, in May, 1906. It was very fresh in his mind, but I had no information whatever on the subject.

Q. Kankakee, Illinois, is how far from Chicago?—A. 52 or 55 miles, something like that.

Q. How far from Kankakee to East St. Louis?—A. I do not recall the Illinois distance. The short-line distance, Chicago to East St. Louis, is 281 miles; and taking out, say, 51, I should say roughly speaking the distance is 230 miles or something like that.

Q. Is there any refinery at Kankakee, Illinois?

Mr. ROSENTHAL. Is there, or was there?

Q. Is there now?—A. There is no refinery at Kankakee, Illinois, to-day that I know of.

Q. Has there ever been one there that operated?—A. I do not know.

Q. Did you ever inquire into the subject at all?—A. I have absolutely no interest in the matter, except what Mr. Page testified to.

Q. Did Mr. Page testify to any shipments of oil from Kankakee, Illinois?—A. Yes, sir. He said that that rate was issued for the Cudahy Packing Company, who had a contract, the Laclede Gas Light contract at East St. Louis.

10273 Q. Is it not a fact that the Cudahys started to build a refinery at Kankakee, and that before it was completed it was bought out by the Manhattan Oil Company and dismantled?—A. I do not know.

Q. You never knew of its shipping a pound of oil, did you?—A. I do not know anything about it at all, Mr. Kellogg.

Q. This billing order 165 was never filed with the Commission, was it?—A. There was no necessity for it—Kankakee, Illinois, to East St. Louis, Illinois.

Q. It never was filed with the Commission, so far as you know?—A. Not so far as I know.

Q. Now, referring to billing order by the St. Louis, Peoria & Northern Railway dated April 10, 1899, defendants' Exhibit 164, from Chicago to East St. Louis, when did you first hear of this billing order?—A. I think it was in the files that I inherited from Mr. Page.

Q. In the files of the Standard Oil Company?—A. It has a stamp on it to which you have already called my attention during the direct testimony, and asked me what it meant. It has a stamp "Received by Howard Page, April 12, '99."

Q. That is where you found it. It is marked on its face in pencil "Canceled." When was it canceled?—A. There is a notation on the tariff that it expired with the current year unless specially continued.

Q. Since you have been connected with the Standard Oil Company has it shipped any oil on a 6-cent rate over the St. Louis, Peoria & Northern Railway to East St. Louis?—A. I do not know.

10274 Q. Did you ever inquire to see?—A. I did not.

Q. During these years since 1904 or 1903, whatever the time was, since you have been an employe of the Standard Oil of Indiana, over what lines has it shipped oil from Whiting to East St. Louis?—A. I think the shipments have been confined to the Chicago, Burlington & Quincy, the Chicago & Alton, and the Chicago & Eastern Illinois.

Q. What other lines reach St. Louis and East St. Louis from Whiting or the Whiting connections by switching?—A. There are a great many. I have known the Monon to take business even out of Chicago for East St. Louis and in connection with the Vandalia via Indianapolis.

Q. The St. Louis, Peoria & Northern is one line?—A. The St. Louis, Peoria & Northern, as I recall, has not been in existence as the St. Louis, Peoria & Northern for a number of years.

Q. It belongs now to the Chicago & Alton?—A. I think you know more about that than I do.

Q. I have a suspicion that it does. Now, the Illinois Central—A. That is a line; yes, sir.

Q. Name the other lines. The Rock Island?—A. I think the Rock Island has rails from Chicago to East St. Louis.

Q. I believe you testified that you put in a 6½-cent rate, effective October 24, 1894, over the C. & E. I. road and the Big Four road from Dolton, Illinois, to East St. Louis, did you not, being Petitioner's Exhibit 576?—A. The copy of the tariff represented

10275 by Petitioner's Exhibit 576 bears my name as general freight agent of the C. & E. I. road.

Q. And also you put in the 6½-cent rate issued the next year, effective October 14, 1895?—A. I did.

Q. During the time you were connected with the C. & E. I. road did you carry oil from Dolton to East St. Louis on that tariff?—A. As I recollect it, we did.

Q. How was the oil billed?—A. I do not remember.

Q. You have no recollection?—A. No, sir.

Q. Was it blind-billed?—A. I do not recall whether it was or not.

Q. What arrangements did you make with the Big Four about billing the oil?—A. I do not recall that I made any.

Q. Did you confer with the Standard officials about putting this rate in?—A. I named them the rate in order to get a share of the business.

Q. To whom did you name the rate?—A. As I recall the conversation, I named the rate to Mr. Howard Page.

Q. You say you named the rate in order to get a share of the business. How was the business going at that time?—A. As I recall it, via the Chicago, Burlington & Quincy and the Chicago & Alton.

Q. How did you find out?—A. I do not remember now, Mr. Kellogg. That was a good many years ago.

Q. You traffic men keep pretty close track of the shipments of your competitor, don't you?—A. Oh, yes, we endeavor to.

Q. The Standard Oil traffic from Dolton or from Whiting
10276 to East St. Louis was very heavy, wasn't it?—A. Was what?

Q. Was very heavy.—A. I do not remember the volume of traffic that was moving at the time that rate was put in.

Q. Well, years afterward it amounted to several thousand cars a year, didn't it?—A. I think it reached as high as 3,500 cars, or something of that kind.

Q. At the time you put that rate in, Whiting was supplying substantially all that southwestern country with oil, wasn't it?—A. I could not say.

Q. You know of no refineries in that country at that time, do you?—A. I should say that at that time I did not know anything about it.

Q. You generally knew where the big oil fields were, didn't you?—A. No, sir; not at that time.

Q. Had you ever heard of any refinery in Kansas or Oklahoma at that time?

Mr. ROSENTHAL. At what date?

Q. 1894 or '5. A. I have answered that question, I think, by saying that at that time I did not know anything about it.

Q. Well, you did know that there was a very large traffic from Whiting to East St. Louis, didn't you, in oil?—A. I knew there was considerable oil moving from Whiting to East St. Louis.

Q. How did you get on to the fact that your competitors were taking all the oil—simply because you were not getting any?—A. Oh, that was in 1894. I do not recall the circumstances leading up to that.

Q. Now, it would not be possible for any one or two roads
10277 to haul all that oil without the other roads knowing it, would it?—A. No; I do not think it would.

Mr. ROSENTHAL. And knowing what the rates were.

WITNESS. And knowing what the rates were.

Q. Then it could not be said that the Chicago & Alton road was blind-billing that oil to keep its competitors from knowing the rate, could it?—A. I do not know anything about blind-billing on the Chicago & Alton Railway.

Q. You have testified here in response to your counsel that blind-billing was used to keep the rate from competitor roads.

Mr. ROSENTHAL. He did not, with respect to the Chicago & Alton.

WITNESS. I have not heard that the Chicago & Alton——

Q. Was there a different reason on the Chicago & Alton than there was on any other road?

Mr. ROSENTHAL. There is not any proof of blind-billing on the Chicago & Alton, Mr. Kellogg. There was not any.

Q. Well, billing it at a different rate, then.

Mr. ROSENTHAL. There was not any proof of that—there is not any.

Mr. KELLOGG. Oh, yes, there is.

Mr. ROSENTHAL. Oh, no.

Mr. KELLOGG. The proof shows that the Chicago & Alton billed it at 18 cents always.

Mr. ROSENTHAL. Waybilled.

Mr. KELLOGG. That is billing.

Mr. ROSENTHAL. Not billing to the Standard.

Mr. KELLOGG. They billed to the Standard at 18 cents, some
10278 of them, and a good many of them at 10.

Mr. ROSENTHAL. Oh, we fought that all out, you know, and the Circuit Court of Appeals said there was nothing to that circumstance as it existed in that case.

Q. How did you bill the oil and settle for it with the Standard of Indiana during the years that you were with the C. & E. I. road?—A. I don't remember.

Q. You don't know how it was settled for or how it was waybilled?—A. I do not remember anything about it.

Q. You have no recollection about it whatever?—A. Not about those details; no, sir.

Q. Will you say it was not blind billed over the C. & E. I.?—A. I would not say that it was or that it was not.

Mr. ROSENTHAL. What difference does it make what a man would say when he says he does not know anything about it?

Q. Why did you make this tariff read from Dolton, Illinois?

Mr. ROSENTHAL. Has not that already been explained?

Mr. KELLOGG. No.

WITNESS. I knew that the oil would come from Whiting, and that it would come via the Chicago & Calumet Terminal road to the C. & E. I. at Dolton, I suppose. That is the only reason I can give at this late day.

Q. That is, you knew that it would come over the Chicago Terminal Transfer to Dolton, and that your rails ended at Dolton. Is that right?—A. I knew that when I secured some of the business from Whiting to East St. Louis that it would come to the C. & E. I. at Dolton.

Q. And so you made this tariff read from Dolton. Is that
the reason?—A. That is the reason as I recall, that Dolton
10279 was included in that tariff.

Why did you make the other tariffs to Evansville read from Whiting?—A. It is a pretty hard thing to try to remember

back 15 or 16 years why I did one thing with one tariff and another thing with another.

Q. But you told your counsel that you remembered putting this in, that you put this rate in, filed it, and you have now stated why you made it read from Dolton, Illinois, and I have asked you why you made the others read from Whiting?—A. While that tariff reads from Dolton, it has a provision applying the tariff from Whiting, Indiana, and I assume that I filed it considering it a straight interstate tariff.

Q. Then, why didn't you say from Whiting to East St. Louis? Why did you put it in a footnote?—A. I evidently considered at the time that the——

Mr. ROSENTHAL. That is not in a footnote. That is in just as big type and as conspicuously printed as anything else on the tariff.

WITNESS. I evidently considered at the time that tariff was issued that it fully covered interstate requirements, and the best evidence of that is that I filed it with the Commission.

Q. Well, I know, but why did you then make it read from Dolton, Illinois, to East St. Louis? Why didn't you make it read from Whiting?

Mr. ROSENTHAL. I submit he has just answered it two ways.

Q. Have you got any other reason than that you have stated?—A. No other reason.

10280 Q. Because your rails ended at Dolton?—A. No; I did not say that. I have not said that.

Q. That is not the reason?

Mr. ROSENTHAL. No; he has not said that. He said that might have been a reason.

A. I said that might have been a reason.

Q. Was it or was it not a reason?—A. Why, away back in 1894 I practically did all the work with one or two clerks, and we used to get out a tariff as best commended itself to our idea at that time; but I specifically applied that rate from Whiting, and filed the tariff with the Interstate Commerce Commission.

Q. Did you ever make any other tariff, other than on oil, read from Dolton, Illinois?—A. I think I have.

Q. Name one.

Mr. ROSENTHAL. That exact question was asked him, and he testified to it before. He said he could not undertake now to name it.

Q. Name one?—A. I could not, now. It is a good many years ago.

Q. Since you have been connected with the Standard, its shipments out of Whiting, Indiana, have been entirely in carloads, have they?—A. Oh, no; the Standard ships some less than carload stuff out of Whiting.

Q. Where to?—A. I could not say.

Q. Well, to all points?—A. I do not know. I do not handle that business.

Q. Who does handle it?—A. Mr. Bogardus.

Q. But it does ship less than carload amounts?—A. There must be some less than carload trade.

10281 Q. Some going to Illinois towns?—A. I should say yes.

Q. St. Louis and East St. Louis?—A. I do not think there would be much less than carload stuff going to East St. Louis.

Q. Would there be any?—A. I could not say.

Q. Under what tariff were the less than carload shipments made?—A. I do not know.

Q. Don't you know?—A. No, sir.

Q. Is there any tariff for them?—A. I never had anything to do with it at all.

Q. Never had anything to do with it?—A. I do not pay any attention whatever in my office to less than carload shipments. Sometimes I look up less than carload rates.

Q. Do you have any tariffs in your office showing less than carload rates?—A. Most all tariffs show less than carload.

Q. Name some of them, from Whiting.—A. Most any—any class tariff names less than carload.

Q. Name one from Whiting, or Chicago applicable to Whiting.

Mr. ROSENTHAL. Do you mean name one that he has in his office?

Q. Name one that applies.

Mr. ROSENTHAL. Or name a tariff which contains a class rate—which?

Q. Yes.

Mr. ROSENTHAL. Well, which?

Q. Both. Separate your answer.—A. What was the question, please?

Q. Name a tariff for less than carload rates from Chicago

10282 applicable to Whiting.—A. Why, I can not give you any by number. I assume the Lake Shore road has a tariff applying from Chicago that would name less than carload rates from Whiting.

Q. What is the name of the tariff?—A. Oh, I do not know.

Q. Is there any traffic association tariff reading west from Chicago?

Mr. ROSENTHAL. Why don't you ask him if Tariff 24 has the less than carload rates?

Q. I will ask the questions myself. Is there any tariff for less than carload rates leading west from Chicago?

Mr. ROSENTHAL. He knows what you are driving at.

A. I should say there were a couple of hundred of them.

Q. Name one of them.—A. The tariffs issued by the Western Trunk Line Committee.

Q. To all points west of Chicago—St. Louis, East St. Louis, and various other places?—A. Oh, yes; there must be tariffs from Chicago that name less than carload rates on oil to every place.

Q. Name one to East St. Louis, and give us the tariff reference.—A. I could not do that.

Q. You could not do it?—A. I do not carry any of those tariffs in my mind.

Q. You do not?—A. No, sir.

Q. Mr. Rosenthal says Traffic Association Tariff No. 24. I will take his suggestion. What about that?

Mr. ROSENTHAL. Mr. Rosenthal said that was what you were trying to show by your question.

Mr. KELLOGG. If you know more about it than I do, I will
10283 follow your very sage advice.

Mr. ROSENTHAL. I am glad to see you have gotten in the right track.

Q. What about that tariff?—A. Well, what about it?

Q. I asked you if you knew about that tariff?—A. You will have to make a more specific question than that. You will have to put your question more specifically.

Q. I will put the question. Does not oil move from Whiting to various Mississippi River points and other points in the West at 5th-class rates?—A. I can not answer that specifically, but my impression is—you have hooked up two questions there in one.

Q. Well, answer them as you please.—A. I do not know specifically, but my impression is that no oil moves to Mississippi River crossings proper on class rates.

Q. Does it to other points west of the Mississippi River?—A. There are tariffs covered by the Western Classification, applying from Chicago, that name 5th-class rates applicable to oil.

Q. And your company makes shipments on those tariffs?

Mr. ROSENTHAL. He said he did not know.

A. I understand shipments are made to Western Trunk Line Committee points on the basis of 5th-class rate, as shown in the Western Classification.

Q. Was the Chicago & Western Illinois a party to the Chicago-St. Louis Traffic Association while you were with that company?—A. I think not.

Q. Didn't it join?—A. At the time you mention we were so
10284 poor that I was not allowed to spend any money to be part of the freight associations.

Q. Did it not join in the Chicago-St. Louis Traffic Association tariffs?—A. There was quite a long time when they used to find a great deal of fault with me for taking individual action as to rates, and I afterward consented that the name of the Chicago & Eastern Illinois should be printed on some of their issues——

Q. Was it not printed on the Chicago-St. Louis Traffic Association tariffs during the time you were there?—A. Just before you ask that question let me answer your former question completely.

Q. Yes.—A. But we were not bona fide members at that time of that association and did not participate in the expense of the maintenance of the chairman and his office, and all that.

Q. But you were parties to the tariff, weren't you?—A. We allowed the name of the Chicago & Eastern Illinois to be put on some of those tariffs.

Q. And you were parties to the tariff of the Chicago-St. Louis Traffic Association, Tariff No. 24 and the one preceding it?—A. I could not say without looking at the tariff.

Q. Look at No. 24, and then if you have not the information look it up to see whether you were.—A. I find that the name of Chicago & Eastern Illinois is on Chicago-St. Louis Traffic Association Tariff No. 24.

Q. Was it also on the tariff which immediately preceded that?—A. I do not know.

Q. You have no recollection of it?—A. No, sir; except what I have stated, that I was not very much given to traffic asso-
10285 ciations in those days.

Q. Now, did the Standard Oil Company of Indiana use the rates named in Tariff No. 24 for any shipments of any kind to any points?—A. I do not know.

Q. What did you mean by saying it did ship on a 5th-class rate?—A. I said that the Standard Oil Company made less than carload shipments out of Whiting at 5th-class rates into the West—Western Trunk Line territory and points like that. I assume they did; and understand, please, that I have also said that I had absolutely nothing whatever to do with that less than carload business.

Q. You mean carload, in the 5th class?—A. You were asking me about less than carload ones.

Q. Carload is 5th class, isn't it, in that association?

Mr. ROSENTHAL. In what association?

Q. In the classification of the Chicago-St. Louis Traffic Association.—A. The Western Classification clearly provides that petroleum takes 5th-class rates.

Q. The Chicago-St. Louis Traffic Association tariffs were governed by the Illinois classification?

Mr. ROSENTHAL. They are governed by what they purport to be.

Q. Well, that is the Illinois classification, isn't it?—A. I could not say without consulting it.

Q. What was the Illinois classification—how was oil classified in carloads in the Illinois classification?

Mr. ROSENTHAL. I think it is in the record here as 5th class, isn't it, Mr. Durand?

WITNESS. As I had never used the Illinois classification
10286 with respect to oil—oil in the State of Illinois always taking commodity rates—I would rather consult the classification before I answer.

Q. What was less than carloads?—A. I had absolutely nothing to do with less than carload shipments and do not know anything about that.

Q. How were they classified?—A. I do not know. I had nothing to do with it at all.

Q. You never have known?—A. I do not recall that I have ever had a bit of correspondence since I have been with the Standard Oil Company with reference to less than carload shipments.

Q. You have been a traffic official for thirty years, as Mr. Rosenthal says. Don't you know how less than carloads of oil were classified?—A. I do not claim to know anything about freight matters unless I have the tariff before me.

Q. And your counsel asks the question? You do not know, then, from your experience of thirty years—you do not know how less than carloads of oil were classified in the Western Classification?—A. I think that oil is classified (and I speak this from memory entirely, having previously told you that I never bother about less than carload shipments. I do not mean to say bother, but I do not interest myself in less than carload shipments. The refineries take care of all less than carload and the major portion of the carload). As I recall, the Western Classification provides a 3rd-class rate on oil in less than carloads.

Q. And the Illinois Classification is the same, isn't it?—A. I do not know without looking at it.

10287 Q. Less than carload shipments out of Whiting, Indiana, to East St. Louis or St. Louis would be made under what tariff?—A. I could not say. I think very likely that there might be cases where, rather than pay the less than carload rate, they would bulk a sufficient number of less than carload shipments to use the carload rate.

Q. I am asking you what tariff would govern less than carload rates from Whiting, Indiana, to East St. Louis?—A. I do not know that any less than carload shipments were ever made from Whiting to East St. Louis.

Q. I am not asking you that question. If made, what would govern them?—A. What rate?

Q. Yes.—A. I would not undertake to answer that without studying that entire tariff with all its supplements.

Q. Well, look at it.—A. Well, shall we adjourn for the day?

Q. No. I ask you what tariff, not what rates.—A. You have asked me to name the rate, and you hand me a tariff.

Q. No; the tariff.—A. You asked me first to name the rate, and you hand me a tariff with 70 or 80 supplements to it.

Q. I asked you to name the tariff under which a less than carload rate would go?—A. I don't know.

Q. You don't know?—A. No, sir.

Q. Would not Tariff No. 24 govern it?—A. There might be some other one.

Q. Look and see if that would govern.—A. I can not answer as to the rate without going all through that tariff and the supplements.

10288 Q. Look at that tariff and see if that tariff would govern the shipment.—A. Well, let us adjourn for the day.

Q. No; we will not adjourn for the day.—A. Because I am not going to answer that question, and you certainly do not expect me to, on perusal of two or three pages, when the document which you hand

me contains 70 pages. Now, if you want me to go through that tariff——

Q. Can you answer that question?—A. Not without going through the tariff and the supplements.

Q. Have you got to read that tariff through to answer that question?—A. Yes, sir.

Q. Read every word in it from beginning to end, to answer that question?—A. I would not be justified in quoting a rate without looking at every supplement.

Q. I have not asked you for the rate. I have asked you what tariff governs a less than carload shipment.—A. Now, wait a minute. You first asked me to name the rate. The stenographer will confirm that.

Q. Now, will you please answer my question?—A. If you want to ask another question, I will answer it.

Q. Less than carloads are not governed by commodity rates, are they, from Whiting, Indiana?—A. Sometimes.

Q. Name a commodity rate that governs less than carload from Whiting, Indiana?—A. I could not say as to Whiting, Indiana.

Q. Name one.

Mr. ROSENTHAL. Wait a minute.

WITNESS. Wait a minute. Don't interrupt me until I get
10289 through.

Q. Go ahead.—A. I say that commodity rates are frequently made on less than carload shipments.

Q. Name one from Whiting, Indiana.—A. I do not know as to Whiting, Indiana.

Q. You do not know of any, do you?—A. I have never investigated the matter of less than carload rates out of Whiting.

Q. So you cannot name a commodity rate from Whiting, Indiana, in less than carload rates, can you?—A. Not without investigating. I know that commodity rates are made on less than carload shipments, and I have made them myself between Chicago and Terre Haute.

Q. Do you know of any out of Whiting, Indiana, or Dolton, Illinois?—A. I do not know whether there are or *or* not.

Q. Very well. Do you know of class rates governing less than carload shipments?—A. I have told you that I have had nothing whatever to do with less than carload shipments.

Q. That is not the question I have asked you.—A. I do not know anything about it.

Q. I am asking you about the tariffs.—A. I do not know anything about it.

Q. Then, you don't know anything about any tariff governing less than carload rates out of Chicago or Whiting, Indiana, that ever existed?—A. I have said to you that I recall that the Western Classification provided a 3rd-class rate on oil in less than carload lots, and I will say to you that I recall that the Official Classification
10290 provides a 3rd-class rate on less than carload lots.

Q. Now, what tariffs control it? The classification is not a tariff, is it?—A. There might be forty tariffs applying out of Whiting that would name rates on less than carload shipments.

Q. Well, there might be. Are there any?—A. I do not know.

Q. You don't know. Then, with your thirty years' experience you can not name any tariff governing less than carload shipments of oil out of Chicago or Whiting?—A. I say there may be a hundred, but I could not name them specifically without studying them.

Q. You can't name any?

Mr. ROSENTHAL. I suppose that question has been answered within the last fifteen minutes here about fifteen times.

Q. Why is it you want to evade answering any question about Tariff No. 24?—A. I am not evading it. You put Tariff 24 before me and asked me to name a less than carload rate from Whiting to East St. Louis, and I said to you I would do it, but before I could answer it I must read the tariff and all its supplements. Now, if anybody can make a fairer answer than that, why, trot them out.

Mr. ROSENTHAL. You might ask Mr. Kellogg why he wishes to ask that question concerning Tariff 24, and whether or not it is to assist the Government in the prosecution of the criminal cases.

Q. Mr. Felton, have you read through all the tariffs that Mr. Rosenthal has given you, about which you have testified, from
10291 beginning to end?—A. I have, either directly or through my assistants, studied them sufficiently to feel that I was justified in quoting a rate.

Q. That does not mean reading them through, does it?—A. Why, if there was a supplement to any of the tariffs that we have quoted, we would study the supplements.

Q. Now, as I understand you, oil in less than carload lots by both the Western classification and the Illinois classification, is 3rd class?—A. I am not sure about the Illinois.

Q. Well, that is your recollection?—A. No; I have not testified to that at all. Now, when you ask me a question, do not say to me that I have testified to something that I have not.

Q. Now, I wish to show you——A. Now, wait a minute. I answered as to the Western classification.

Q. 3rd class?—A. On the Official; I have not made any reference to the less than carload rate in the Illinois classification, and it is not fair for you to assume that I have when you put another question.

Q. We will furnish you with the Illinois classification and see if you know it when you see it.—A. Then I will be glad to——

Q. Now, isn't it a fact that on the second page of Tariff No. 24 the rates from Chicago to East St. Louis on 3rd class are named, on the top of the second page, in plain letters and figures?—A. Some rates are shown there.

Q. Isn't the rate on 3rd class?—A. There is a 3rd-class rate——

Q. From Chicago?—A. Between Chicago and common
10292 points and East St. Louis and common points.

Q. How much is it?—A. The 3rd-class rate, as shown on page 2 of what purports to be Tariff 24, between Chicago and East St. Louis, is 29 cents.

Q. 29 cents. Now, when was this tariff effective?—A. It bears date effective May 15, 1899.

Q. You did not have to read the tariff through to see that, did you?—A. No; but I would not quote 29 cents on oil out of that tariff on that information.

Q. Now, if the classification under which that 3rd class——A. There may be a qualifying clause in these seventy supplements.

Q. Wait a minute. If the classification classifies oil in less than carloads as 3rd class, then under that tariff as it then existed when it was put in, it was 29 cents a hundred, wasn't it?—A. Not necessarily.

Q. Why?—A. There might be a commodity clause that would qualify it.

Q. Do you know of any commodity clause that qualifies it?—A. I will study it if you want me to.

Q. Please do so.—A. We had better adjourn for the day.

Q. No; we will not adjourn for the day. Please do not be so anxious to get away.—A. I am not at all anxious.

Mr. ROSENTHAL. Oh, we will stay with you.

Q. Have you got Tariff No. 24 in your files?—A. I have not.

Q. Have you ever had it?—A. I do not know.

Q. Is it an important tariff?—A. Not to my office.

Q. Why?—A. Because there was very little in it that we
10293 would be interested in—that I would be interested in.

Q. The Standard Oil Company ships many products that do not take a commodity rate, does it not?—A. Anything of that kind handled between Chicago and points covered by that tariff would be handled by Mr. Bogardus.

Q. The Standard Oil of Indiana would have it then, wouldn't it?—A. I could not say whether they had it or not.

Q. You don't know whether they had it or not?—A. No, sir.

Q. There are many commodity rates named in this tariff, are there not?—A. There are.

Mr. ROSENTHAL. The testimony in the Alton case shows when they had it. I am willing that should go in here.

Mr. KELLOGG. What is that?

Mr. ROSENTHAL. The testimony in the Alton case shows when they got Tariff 24 in their possession.

Mr. KELLOGG. When was it?

Mr. ROSENTHAL. Sometime in 1905 or '6.

Q. You never have investigated to see whether they had this tariff or not?—A. The Standard Oil Company of Indiana?

Q. Yes.—A. I did not.

Q. Never made any inquiry?—A. I do not recall that I ever——

Mr. ROSENTHAL. The testimony of Mr. Persons in the Chicago & Alton case shows the exact date when they got it.

Q. Now, what is this Chicago & St. Louis Traffic Association tariff?—A. I do not know how to answer that question. You have the tariff in your hand. It shows what it is.

Q. Is it a tariff governing class shipments, all classes
10294 from Chicago and Chicago switching points to East St. Louis and many other points.

(Mr. Kellogg put the tariff on the table before the witness.)

WITNESS. It is a tariff that covers a very large scope of points in both directions.

Q. I show you the Illinois classification in force July 1, 1895. Please state how oil in less than carloads is classified.—A. The classification which I have, purporting to be Railroad and Warehouse Commissioners' Revised Schedule of Rates, including the classification in force July 1, 1895, provides 3rd class rating on petroleum oil in less than carloads.

Q. Then I show you tariff No. 24 and ask you, under tariff No. 24, what the rate was on oil from Whiting, Indiana, to East St. Louis in less than carload lots?

Mr. ROSENTHAL. It does not make any rate. Those two documents do not make any rate from Whiting.

WITNESS. I was just about to say that unless I study that tariff very carefully I can say that I do not know that it makes a rate from Whiting to East St. Louis.

Q. You do not know that it does?—A. There is nothing that I see so far that shows Whiting.

Q. Is it from Chicago?—A. It names a rate from Chicago to East St. Louis; yes, sir.

Q. By application sheet, is that made applicable to Whiting?—A. That is true.

Q. Then it does name a rate from Whiting to East St. Louis of 29 cents on less than carload lots, doesn't it?—A. Provided that
10295 there is no qualification in the supplements, or that there is no other rate that would be different.

Q. Now, will you please look it over to-night and see?—A. I will do the best I can, Mr. Kellogg, but you are asking a good deal of a witness on the stand all day to study an 80-page tariff at night.

Q. I show you defendants' Exhibit 146, in which you state the ½ cent paid for the bridge transfer between Jeffersonville and Louisville, and about which I examined you the other day, and asked you to look it up.—A. I would like to see tariff 46. It just occurs to me in connection with that. I think that might throw a little light on the subject.

(Document handed to witness.)

WITNESS. Tariff 46 provides (the Government put it in evidence; I do not know what the exhibit number is), on page 24, for bridge charges between Louisville and Jeffersonville. Just let me see if

there is anything in here. It provides that the charge on oil tanks loaded is a half cent per 100 pounds.

Q. Now, as a matter of fact, isn't it true that the Standard Oil of Indiana shipped to Jeffersonville, and then that the roads south of there absorbed the bridge charge?—A. I will have to answer that question on secondary information, as I have no personal information, not handling the business. My answer on that basis is that Mr. Bogardus, who handles that business, confirms what he told me in the court room the other day, that on traffic going south via
10296 Louisville he has paid the extra half cent.

Q. When it was consigned to Louisville?—A. No, sir; when it went through.

Q. But when it was consigned to Jeffersonville and then reconsigned, did not the southern lines absorb the half cent?—A. He tells me that he has always paid the half cent on their traffic crossing the Ohio River at that gateway.

Q. It does not make any difference how it is consigned?—A. That is what he tells me.

Q. That is what he said, is it?—A. That is what he said.

Q. Irrespective of how it was consigned?—A. That is what I say that he said to me.

Q. And you know nothing about it yourself?—A. Personally I have never handled the traffic.

Q. Then this exhibit, so far as you know——A. Is correct.

Q. But you know nothing about it personally?—A. Why, I put in a lot of stuff here, and it has been agreed on both sides——

Q. I have not agreed to stuff that you have put in that you don't know anything about—not at all.—A. It has been prepared by my assistants.

Q. But you know nothing about that whatever, as to whether they paid that or not?—A. In regard to that half cent, Mr. Bogardus tells me that he has paid it.

10297 Q. Now, Mr. Felton, in your exhibit here you state the rates from Parkersburg, West Virginia—the rate on petitioner's exhibit and the correct rate, as you claim, do you not?—A. I do.

Q. Now, you state that the rate on the Government's exhibit from Parkersburg to Greensboro is 46 cents, but the correct rate is 45 cents, do you not?—A. That is the way the statement reads.

Q. Now, I show you the Government's exhibit of the rate from Parkersburg to Greensboro, and ask you if it is not 43 cents instead of 46 cents.

Mr. ROSENTHAL. Have you got the original exhibit?

Mr. KELLOGG. Yes; I have the original exhibit.

A. Maybe my exhibit was made from some other exhibit of yours. What is the number of it?

Q. Government Exhibit 586. The rate thereon is 43 cents, isn't it, while you have got it 46 cents?—A. Your rate appears as 43 cents on this piece of paper that I have before me.

Q. Well, that is Government Exhibit 586, which you cite.—A. Well, I will look that up and see. You say Greensboro?

Q. Greensboro.—A. We show the rate is 46 cents.

Q. Yes; and it actually is 43 cents.—A. We show it on the Government exhibit as being 46 to Greensboro, and this sheet here makes it 43; yes, sir.

Q. Now, you say the actual rate is 45.—A. According to that figure we could not make your 43-cent rate. It shows the beauty of rate making, Mr. Kellogg.

Q. You say the actual rate is 45 cents. Now, as a matter of fact, isn't the actual rate 43 cents?—A. I do not know till I check it further. What else is there besides Greensboro?

10298 Q. Each one of those towns. Look at the tariff and see what the actual rate is. We gave you the reference to the tariff on the exhibit.—A. I will check this up with three or four other things I have got, later on.

Q. All those rates from Parkersburg.

Mr. MARTYN. Greensboro, Raleigh, Wilmington, and Charleston?

Mr. KELLOGG. Yes; they are all wrong.

WITNESS. If we are wrong we will admit it. It shows the difficulty in rate making. You have got a lower rate in your exhibit, according to this corrected exhibit, than we could find.

Mr. MARTYN. What was this copied from, if they are all copied wrong?

Mr. KELLOGG. They are.

WITNESS. I think we certainly must have had something else.

Q. I will ask you a few more questions, if you are going to check that up. You stated in your testimony that in making petitioner's Exhibit 586, the Parkersburg rates, Mr. Schindler had used the combination by way of the Richmond gateway, did you not, and that the Standard Oil did not ship any oil that way?

Mr. ROSENTHAL. Well, whatever he said in that respect.

A. I do not recall making any remarks as to how Mr. Schindler made his exhibit.

Q. Let me show you your testimony, page 9910 of the record.—A. I do not think I passed any opinion as to the maner in which Mr. Schindler made up his rates. I simply questioned the correctness of them as they stood.

Q. In your testimony, on page 9909, did you not say that Mr. Schindler used the Richmond gateway or Virginia gateway

10299 in making his rates, and that the Standard Oil did not ship that way?—A. I would like to see my exhibit first.

(A paper was handed the witness, and he also referred to his testimony.)

WITNESS. I think this testimony of mine that you have referred to me was not made with respect to this. I think when my counsel asked me that question he had the petition. How about that, Mr. Rosenthal? I think you had the Government petition before you,

and your question was based on the information in the petition and not in the exhibit.

Mr. KELLOGG. In the petition no tariff is named, and we afterwards furnished you and you had petitioner's Exhibit 586, with the Parkersburg rates on it, before you.

Mr. ROSENTHAL. Let me see the questions that you were asked, and let us see what you had.

(Mr. Rosenthal read the testimony of the witness on this point.)

Mr. ROSENTHAL. I simply assume in my question, by reason of the identity of the rate with the rate as shown by the Richmond gateway, that that was the way they were figured; that is all.

Q. Now, as a matter of fact the Government Exhibit 586 is not made by the Richmond gateway or Virginia gateway at all, is it?—A. I do not know.

Q. Well, doesn't it show the tariff reference?—A. When Mr. Rosenthal asked me that question, as I have just stated, I assumed that he had something before him that bore that out and I made the statement.

10300 Q. And you said "Yes" simply because he asked the question?—A. We were going through a whole lot of exhibits, and I supposed that he made that statement, based on something he had before him. If that is not so, I will be very glad to withdraw that and correct it.

Q. Now, look at the tariff and see if it is not Queen & Crescent tariff I. C. C. No. 3570, through the Lexington gateway.—A. What point is that? Greensboro?

Q. Charleston and Savannah.—A. Are you talking about the rate from Marietta?

Q. Yes.—A. From Marietta to Charleston?

Q. No; Parkersburg.—A. Parkersburg to Charleston?

Q. Yes.—A. The reference on this document before me is Queen & Crescent tariff I. C. C. 3570.

Q. Now, that is not through the Virginia gateways at all, is it?—A. I would like to see the tariff. What is the point—Charleston?

Q. Yes; Charleston.—A. That is not through the Virginia gateway; no, sir.

Q. But via Lexington gateway?—A. The Queen & Crescent would not operate via Lexington.

Q. Well, it would operate through the Lexington gateway in connection with other lines, wouldn't it?—A. That is correct. I was thinking for the moment of shipments coming from Lexington via Marietta.

Q. That is the way you claim the Standard Oil made its shipments, if it made any, down to that country?—A. That is true.

Q. So that Mr. Schindler's exhibit, or the one that you call

10301 Schindler's exhibit, petitioner's Exhibit 586, is made up by the route that you actually shipped?—A. The information I have before me right now indicates you are correct.

Q. Now, in regard to those other exhibits, those distances that I called for this morning, have you got those checked up yet?—A. Some of those distances that you gave me this morning to correct we find are electric railways, short divisions of which have been converted into steam roads.

Q. That is true of only one case, isn't it, just one case?—A. I don't know. Mr. Lown called my attention to that, and I think he is working those out now; he is over in Mr. Martyn's office.

Q. In one case an electric road has been converted into a steam road?—A. He said he did find that. I don't know as he said how many cases he found.

Q. The others were errors in your exhibit, were they?—A. I don't know that. I can't tell until he finishes his work.

Q. You are not ready to report on that?—A. I have no doubt but what you will find some errors in our exhibits.

Q. Mr. Felton, you criticised an exhibit made up by Mr. Boltz. Have you since checked those rates with the tariff rate given you so that you are able to state whether they are correct or not?—A. The tariff which Mr. Boltz finally turned in as being the tariff from which those rates were taken was a tariff issued in 1906, as I recall it.

Q. Yes; I think that is correct.—A. Doesn't that throw the whole exhibit out?

Q. Oh, no; there is no date stated in the exhibit for the
10302 rates. I just want to get the numbers, so that we will have them in the record; that is all. I show you petitioner's Exhibit 654.—A. I have not checked those with the new tariff numbers, Mr. Kellogg; it is being done.

Q. Has anybody checked them so that you can state whether it is correct or not?

Mr. ROSENTHAL. No.

Q. Will you have that ready in the morning?—A. If possible with all we have to do; yes. If not, I will have to ask you to wait another day.

Q. Now, Mr. Felton, during the years 1903 and 1904, the Union Tank Line Company received a great many passes for its employes and agents from the railroads, did it not?

Mr. ROSENTHAL. I think that is in the record a great many times, isn't it? At all events, I do not think it is cross-examination of Mr. Felton. But that appears, and it is the uncontradicted testimony in this record.

Q. Could you give us a list of them for 1903 and 1904, of the agents and employes of that line?—A. May I kindly ask Mr. Rosenthal to repeat what he said, or ask the reporter to read it?

(The reporter then read Mr. Rosenthal's statement.)

Mr. ROSENTHAL. I do not know as it appears with respect to those years, but it appears at certain periods.

WITNESS. You say there is uncontradicted testimony in this record that the Union Tank Line received passes?

Mr. KELLOGG. Certainly.

Mr. ROSENTHAL. There is testimony in this record—oh, no; I think it was the Galena-Signal men, not the Union Tank Line
10303 employes.

Mr. KELLOGG. Union Tank Line employes. Mr. Collings testified to it.

Mr. MORRISON. There is no testimony as to the extent to which they received passes.

Mr. ROSENTHAL. That may be. There is some testimony in the record that either the Union Tank Line or Galena-Signal men received passes; I have forgotten now which it was.

Mr. KELLOGG. Union Tank Line. Mr. Collings testified to it.

Mr. ROSENTHAL. Well, I don't remember.

Q. Is it a fact——A. The Union Tank Line in 1903 received some passes; yes, sir.

Q. It received a large number, didn't it?—A. I think not a large number.

Q. Did you keep a list of them?—A. No, sir.

Q. No exchange list?—A. No, sir.

Q. For instance, take the agent that was employed by the Standard Oil of Kentucky who was an agent of the Union Tank Line; did he have a pass?—A. I don't know whether he had or not.

Q. You have no list so that you can tell?—A. No record whatever, Mr. Kellogg.

Q. Didn't you ever keep a list of the passes?—A. No, sir.

Q. None whatever?

Mr. ROSENTHAL. A great many government officials used to travel on passes in those days that don't now.

Mr. KELLOGG. And other people, too.

Mr. ROSENTHAL. And other people, too. We are all very
10304 sorry that we can't all get in on them.

Mr. KELLOGG. Now I am through with Mr. Felton, except as to those matters I have asked him to produce and those sheets that he is checking up, and I wish he would have those in the morning.

Mr. ROSENTHAL. We will move along as rapidly as we can on that.

(An adjournment was here taken until the morning of Wednesday, October 14, 1908, at 10.30 o'clock.)

10305 ROOM 677, FEDERAL BUILDING, CHICAGO, ILL.,
Wednesday, October 14, 1908—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison; on behalf of the defendants, Mr. Moritz Rosenthal, Mr. John S. Miller, Mr. Chauncey W. Martyn; on behalf of the Waters-Pierce Oil Company, Mr. J. D. Johnson.

A. M. FINLAY, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. ROSENTHAL:

Q. What is your full name?—A. Andrew M. Finlay.

Q. Where do you live, Mr. Finlay?—A. St. Louis, Missouri.

Q. How long have you lived there?—A. All my life.

Q. What is your business?—A. Vice-president of the Waters-Pierce Oil Company.

Q. How long have you been vice-president of that company?—A. Since June, 1905, and previous to that I was at different times. I have been vice-president twice.

Q. In the early 90's, 1890 to 1895, were you an official of the waters-Pierce?—A. I was then vice-president during that period.

10306 Q. That is, of the old Waters-Pierce Oil Company?—A. Yes, sir.

Q. As vice-president of the Waters-Pierce Oil Company, did you have to do in the early 90's with traffic matters?—A. Yes, sir; I had charge of traffic matters.

Q. Do you remember the time that the Waters-Pierce began making shipments into Louisiana by way of Alexandria?—A. Yes, sir.

Q. That was when—about '94 or '5?—A. 1894, I think it was; shortly after the road was extended. The Iron Mountain road branch was extended to Alexandria from Pine Bluff, I think it was.

Q. Where is Alexandria?—A. It is on the Southern Pacific, 10 miles from Cheneyville, which was the former connection of the T. & P. with the Southern Pacific.

Q. In the State of Louisiana?—A. In the State of Louisiana.

Q. And the T. & P. is what—the Texas & Pacific?—A. The Texas & Pacific.

Q. How do you get from St. Louis to Alexandria—via what routes?—A. The Iron Mountain through to Alexandria.

Q. The Iron Mountain from St. Louis through to Alexandria?—A. Through to Alexandria.

Q. And there the Iron Mountain connects with the Southern Pacific, does it?—A. Yes, sir.

Q. And the Southern Pacific has a road which extends through different portions of Louisiana, does it not?—A. Yes, sir.

Q. Reaching various local points in the State of Louisiana?—A. Yes, sir.

Q. When did you say the Iron Mountain was extended to Alexandria?—A. My recollection is it was previous to—in the

10307 early 90's—'94 or '93.

Q. And prior to that time there had been no junction there between the Iron Mountain road and the Southern Pacific?—A. No, sir; not that I know of.

Q. The Waters-Pierce Oil Company at that time were doing business in the State of Louisiana at local points?—A. Yes, sir.

Q. Selling petroleum and its products there?—A. Yes, sir.

Q. Prior to the latter part of 1894 how had you reached these various local points?—A. Through New Orleans.

Q. That is, the shipments were from St. Louis, or East St. Louis, to New Orleans?—A. Yes, sir; reshipped from there.

Q. Reshipped from New Orleans to local points?—A. To local points on the Southern Pacific within the State of Louisiana.

Q. And had that method of reaching local Louisiana points prevailed for many years before that, or for some years before that?—A. Yes, sir; I should think five or six years previous.

Q. At that time what was the rate from St. Louis to New Orleans for petroleum and its products?—A. 18 cents a hundred.

Q. And by what rail route?—A. The Illinois Central, to the best of my recollection.

Q. And then, when the product reached New Orleans, what became of it?—A. It was reconsigned to points of destination on the line of the Southern Pacific road in the State of Louisiana.

Q. Taking what rates?—A. The rates from New Orleans to the various points to which it was consigned; taking the rates provided in their tariff from New Orleans to those points.

Q. The Waters-Pierce Oil Company had large storage
10308 tanks in New Orleans?—A. Not at New Orleans, but at points in Louisiana.

Q. Now, do you know how far Alexandria is from St. Louis?—A. I could make a guess at it. I suppose it is about 600 or 700 miles.

Q. How much closer to St. Louis is it than New Orleans?—A. I should judge about 200 to 250 miles.

Q. And these various local points on the lines of the Southern Pacific in Louisiana to which the Waters-Pierce was shipping, were they located in between Alexandria and New Orleans, and that general territory?—A. Nearer Alexandria than New Orleans.

Q. In 1894, at the time that the Iron Mountain extended its line to Alexandria, thereby connecting at that point with the Southern Pacific, did you then begin shipping via Alexandria?—A. About that time; yes.

Q. About that time?—A. About that time.

Q. And was a rate made by the Iron Mountain road in connection with those shipments?—A. Yes, sir.

Q. Of how much?—A. 15 cents a hundred, St. Louis to Alexandria, when destined to points on the line of the Southern Pacific road——

Mr. KELLOGG. Now, what date was that? Just a moment——

WITNESS.——in Louisiana.

Q. And otherwise?—A. The local shipments for Alexandria proper paid 25 cents a hundred.

Q. And were there tariffs which were in existence covering those rates at that time?

Mr. KELLOGG. The tariffs are the best evidence. They are in evidence.

10309 Q. They are already in evidence. This is only preliminary.—A. Yes, sir.

Q. Do you know Mr. Stith?—A. Yes, sir.

Q. Who is he?—A. He is now the traffic manager of the Waters-Pierce Oil Company.

Q. Was he in 1894 connected with the Iron Mountain Railway?—A. Yes, sir.

Q. In what capacity?—A. I think then as the general freight agent.

Q. Do you remember his calling upon you at the time the Iron Mountain extended its line to Alexandria and having a talk with you concerning the transportation of Waters-Pierce products by way of Alexandria into Louisiana?—A. Yes, sir.

Q. About when was that, Mr. Finlay?—A. In the early part of 1894.

Q. Do you remember what that talk was?—A. Yes, sir; he said that the Iron Mountain had their——

Mr. KELLOGG. Now, one moment. That is objected to as incompetent and immaterial.

The EXAMINER. Go on and answer it.

A. He said that the Iron Mountain had extended their line to Alexandria, and he wanted to know why it was that the Iron Mountain road could not secure the shipments of the Waters-Pierce Oil Company to Louisiana points on the Southern Pacific road. I told him we were perfectly agreeable, would be perfectly agreeable to give him the business, provided the rates were equalized through Alexandria, the same as we were paying through New Orleans.

10310 Q. Now, just what did you mean by that?—A. I meant that there were rates in from New Orleans on the Southern Pacific, to points on the Southern Pacific in Louisiana, and that if a rate was named—I think Mr. Shrever was then traffic manager of the Southern Pacific, or Mr. Bean, I don't remember which—if the Southern Pacific would make the same rates from Alexandria to these local points that applied from New Orleans to these same points, and the Iron Mountain on their part would name us or would make a 15-cent rate, it would equal, with the——

Q. It would be the equivalent——A. Be the equivalent——

Q. —— of the New Orleans rate?—A. It would be a combination that would be equivalent to the combination through New Orleans.

Q. That is to say, if you could get the 15-cent rate indicated from the Iron Mountain to Alexandria, and then a rate from the Southern Pacific from Alexandria to Louisiana points beyond, that would give you a rate that would be the equivalent of the rate from St. Louis to New Orleans, and from New Orleans to points beyond in Louisiana on the Southern Pacific, you were perfectly willing to divert your traffic via Alexandria into Louisiana instead of via New Orleans into Louisiana?—A. Yes, sir; so long as the freight did not cost us any more money through the Alexandria gateway than through the New Orleans gateway.

Q. Were there any advantages that would accrue to your company aside from the matter of rates, by using the Alexandria gateway rather than the New Orleans gateway?—A. Yes, sir. We had had a great deal of trouble for two or three years previous to this
10311 15-cent rate in getting our shipments through New Orleans, particularly during the cotton season and the rush, busy season. I recall where we had to send men down from Marshall, Texas, every little while to practically stay with the cars to get them through the yards at New Orleans. Our object, or desire, rather to change the routing of the business, or have the business go through Alexandria, was because of the shorter haul, and to avoid this congested condition, which always resulted in the cotton season and the busy season at New Orleans. There was absolutely nothing else in it.

Q. So that in the first instance you avoided the congestion that you have just described, and in the second instance you got a shorter haul to the extent of several hundred miles, and in addition to that you got an equivalent rate.—A. Which meant the quicker return of the tank cars, that could be used for another load.

Q. Does the Waters-Pierce Oil Company have storage tanks in Alexandria?—A. Yes, sir.

Q. Large ones?—A. I think they are probably about 17,000 gallons, say 350 barrels each.

Q. And in addition to storage tanks, was a warehouse of any capacity established there by the company?—A. Yes, sir.

Q. How much of a warehouse?—A. I could not say positively, but I would make a guess at it. It might have been 24 to 30 feet long by 16 to 20 feet wide, in those days. We have since rebuilt on a larger scale.

Q. At the time of the establishment of the Alexandria rate was there any correspondence passed between you, as vice-presi-
10312 dent of the Waters-Pierce Oil Company and Mr. Smith as general freight agent of the Iron Mountain road, in connection with that rate and the transportation?—A. There was correspondence after the first interview where Mr. Smith solicited the business for the Iron Mountain road.

Q. Have you that correspondence with you?—A. Copies of it.

Q. Will you produce it, please?

(Witness hands papers to Mr. Rosenthal, which are marked Defendants' Exhibit 189–A to 189–M, inclusive.)

Q. I show you defendants' Exhibit 189–A to M, inclusive. Is that the correspondence concerning which you have just testified?—A. Yes, sir.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibits 189–A to M, inclusive.

Mr. KELLOGG. They are objected to as irrelevant, incompetent, and immaterial. Go ahead, and I will be looking the correspondence over.

Q. What was the conclusion of that correspondence, in so far as the making of the 15-cent Alexandria rate via the Iron Mountain was

concerned?—A. It resulted in their putting in the rate of 15 cents to Alexandria on shipments destined to points on the Southern Pacific Road.

Q. And thereafter did you ship via the Alexandria gateway instead of via the New Orleans gateway?—A. Entirely, so far as I can——

Mr. KELLOGG. Are these unsigned letters from Mr. Stith?

Mr. ROSENTHAL. They are all copies. You may cross-examine him concerning them.

10313 Mr. KELLOGG. No; I do not care about that; only I want to know if they are from Mr. Stith.

WITNESS. Yes, sir; they are.

Mr. ROSENTHAL. Yes; all from Mr. Stith. Mr. Stith will verify those.

Mr. KELLOGG. Oh, I do not care anything about that.

Mr. ROSENTHAL. That is, you do not make the point that they are simply copies.

Mr. KELLOGG. No; I do not make the point that they are simply copies.

Q. Your shipments that you made to New Orleans were all made from East St. Louis, were they not, practically?—A. Most of them were.

Q. And as I understand it, the rate was 18 cents from East St. Louis to New Orleans?—A. From East St. Louis.

Mr. ROSENTHAL. My attention is called to the fact that I said St. Louis.

Cross-examination by Mr. KELLOGG:

Q. When the 15-cent rate was published, or issued, or whatever you call it, you received it at your office, did you?—A. I could not say positively as to that. Mr. Stith advised me that the 15-cent rate was fixed, and that settled it so far as I was concerned in the routing of the business.

Q. It was your custom to receive tariffs, wasn't it, when they were put in?—A. I presume they might have had a copy in the tariff department.

10314 Q. Was that your custom, to receive the tariffs?—A. Back in those days I could not say whether that was——

Q. It has been your custom since, to receive the oil tariffs?—A. It has been of late years; yes, sir. We have a more complete system now than we ever had in the last five years.

Q. I show you Government Exhibit 596 and the tariff preceding it. Are those the rates you refer to as the 15-cent rate to Alexandria, destined to points beyond? I will change that question. Is Exhibit 596 the tariff that was put in?

A. I have seen this copy of late. This one I do not remember of ever having seen.

Q. The one preceding that?—A. The one preceding that, the one dated December 1, 1894.

Q. What I mean is, is that the rate?—A. This is the rate—was the rate. It is not now; no.

Q. When was it taken out by the railroad?—A. When we started to make shipments from the South and had no further use for it from the North; after the Texas fields were discovered—I mean crude oil fields—and the refineries started to operate from Beaumont and Corsicana, we supplied that territory——

Q. That rate was not taken out until May, 1906, was it?—A. I think it was probably in the early part. I could not say just when.

Q. Well, in the early part of 1906 or the summer of 1906?—A. It was '6.

Q. 1906?—A. I was away in the early part of 1905.

Q. It was taken out after the Department of Commerce and Labor discovered it, wasn't it?—A. After they discovered it?

10315 Q. Yes.—A. It may have been about the time that they were at work.

Q. Investigating it?—A. Investigating it.

Q. You remember when they were at work in St. Louis, don't you?—A. It was in 1906.

Q. And this rate was taken out immediately afterwards?—A. I could not say as to just when——

Q. Well, about that time, wasn't it?—A. Mr. Stith can tell you more about it than I can. I don't know.

Mr. ROSENTHAL. Mr. Durand is entitled to all the credit for that.

Q. Well, it was in force until that time.—A. It was in force until it was taken out.

Q. About May, 1906?—A. Oh, I don't say that we made use of it.

Q. Did you make any shipments during 1906 or 1905 on that rate?—A. I could not tell you without going back to the records now. We were supplying most of that territory then from Corsicana and from Beaumont.

Q. You were shipping in 1905 and 1906 under that rate, were you not, until it was taken out?—A. If we had any business to move from St. Louis, the 15 cent rate would apply and did apply up to the time it was taken out.

Q. You did have business to move during that time, didn't you?—A. I presume there was an occasional car, possibly a box car.

Q. Well, we will see. I show you a waybill showing a shipment of the Waters-Pierce Oil Company from St. Louis to Alexandria, 15-cent rate, destined to Franklin, Louisiana, November 3, 1905.

10316 Did you make a shipment——A. I said that up to the time that the rate was taken out we probably made shipments.

Q. Well, that is all I want.—A. Let me see this one minute, will you, please?

Q. Certainly.—A. This bears out the statement that I just made, that it was probably a box car. That is a box car.

Mr. ROSENTHAL. Of what kind of oil—do you know?

A. It was a mixed shipment, lubricating oils, I believe, and linseed oil, such oils as we would not get from the refineries in Texas.

Q. Now, those shipments were consigned from St. Louis or East St. Louis directly through to the place of destination beyond Alexandria, were they not?—A. On the 15-cent rate?

Q. Yes, sir.—A. No, sir. They were consigned to Alexandria, for the point of destination.

Q. I show you the same exhibit I showed you, 600, being the waybill. Does it not show on its face from St. Louis to Alexandria, destined to Franklin, Louisiana?—A. That is what I just stated.

Q. Yes. Then the shipment went direct through, didn't it?—A. It did not.

Q. Was it pumped out of the car into the——A. No, sir; it was reconsigned. It could not be pumped out.

Q. It was not taken out of the car, was it?—A. It could not be pumped out, because it was a box car.

Q. The box car went directly through, didn't it?—A. The same box car evidently, because we did not transfer it.

Q. It was not unloaded?

Mr. ROSENTHAL. Wait a minute. Let him finish his answer.

10317 I don't suppose he knew what actually took place there.—A. I don't know whether the contents of that particular car were taken out and put into another car or not. I assume——

Q. All you know is what you see on the face of that bill?—A. That is all I can say about it. I don't know anything about it.

Mr. ROSENTHAL. Do not let counsel for the Government, in a hurried examination, lead you into an answer that you do not intend to make. Take your time.

Q. It was consigned to the Waters-Pierce Oil Company, Franklin, Louisiana, wasn't it? [Handing witness paper.] Look under the head of consignee and designation.—A. (After examining the paper.) This is evidently a railroad bill of lading, and not such a bill of lading as we would take. It is a waybill.

Q. It shows under the heading "Consignee and destination," "Waters-Pierce Oil Company, Franklin, Louisiana."—A. I will read what it says. "Waters-Pierce Oil Company, care of Compress tracks——

Mr. ROSENTHAL. Is that a railroad waybill?

WITNESS. As far as I know, it is. Mr. Stith can tell you more about that than I can. "Care of Compress Company tracks, Franklin, Louisiana."

Q. What is the name of the consignee stated in it.

Mr. ROSENTHAL. Does not that appear?

Q. Right under the head of "Consignee?"—A. It says "Care of Compress Company tracks," the way I read it.

Q. "Consignee and destination, Waters-Pierce Oil Company," isn't it, the very first words?—A. Yes, sir.

10318 Q. Why didn't you say so, then?—A. I did not understand your question, or I should have answered you as you asked me.

Q. Then it was consigned to the Waters-Pierce Oil Company at Franklin, Louisiana, wasn't it?—A. According to that waybill it would look that way to me, but we do not handle waybills in our business.

Q. Very well; what document did you issue for that car?—A. A regular bill of lading. We would take a signed bill of lading, consigning the car to——

Q. Produce the bill of lading for that car, will you?

Mr. ROSENTHAL. Consigning the car to what?

WITNESS. Consigning the car to Alexandria for a point on the Southern Pacific road—Franklin in that case.

Q. Please produce the consignment of that car.—A. I will be glad to if I have it.

Q. Or the receipt from the railroad company which was given to you for it.

WITNESS. Mr. Stith, can you help out on this? You are more familiar with these than I am.

Mr. STITH. I do not think we have any bills of lading.

WITNESS. That is what I was not sure of. We haven't the bills of lading. We have the expense bills here.

Q. Well, let me see the expense bills.—A. I will see if I have got one of this car.

Mr. STITH. 8297.

(Witness examined papers with the assistance of Mr. Stith.)

WITNESS. This is the prepaid expense bill, but not the bill of lading.

10319 Q. Well, let me see it.

(Witness hands paper to Mr. Kellogg.)

Mr. STITH. Have you found it?

WITNESS. I have found the prepaid expense bill, but I do not find the bill of lading.

Mr. STITH. I do not think there is a bill of lading there.

WITNESS. I do not think they got those out.

Q. Well, where is the consignment, if you had any.—A. You mean the bill of lading?

Q. Yes.—A. We did not get the bills of lading. All we were asked to get was the expense bills. We have got those——

Q. Have you got the bills of lading for these shipments in your office?—A. 1905? I doubt——

Q. 1906.—A. 1906, I doubt. It is not customary to keep, in a large——

Mr. ROSENTHAL. We will look for them.

Q. Well, give us the bills of lading. Now, the prepaid freight bill rendered to you by the St. Louis, Iron Mountain & Southern shows consignee, Waters-Pierce Oil Company, destination Franklin, Louisiana, doesn't it, right on its face?—A. That is what it shows; but I would like to show on our part the prepaid bill from Alexandria to Franklin.

Q. Yes; but I am talking about the consignment.—A. This prepaid freight bill——

Q. Then, as a matter of fact, that car of oil was consigned to the Waters-Pierce Oil Company at Franklin, Louisiana, wasn't it?—A. No, sir; it was not. I told you that before. It was
10320 consigned to Alexandria for reshipment to Franklin, Louisiana.

Q. Where is your document showing any such thing?—A. I would get the bill of lading—if I had known you were going to ask for it, I would have been glad to have it here if it could be found, but it is a question——

Q. Get the document showing the consignment to Alexandria, Louisiana, and the reconsignment from Alexandria, Louisiana, to destination, to wit, Franklin.—A. Here is a memorandum, which is a memorandum used in our office for tracing the cars, following them up, showing that that car was reshipped from Alexandria to Franklin. Isn't it 8297?

Q. All there is on this statement is, from Alexandria to Franklin. That is a statement of the freight charges, isn't it?—A. That is showing us that the freight charges was taken care of——

Q. I made no claim——

Mr. ROSENTHAL. Wait a minute. Showing that the freight charges were what?

WITNESS. That the shipment was reconsigned from Alexandria to Franklin.

Q. You mean rewaybilled?—A. Reshipped.

Q. Well, you settled your freight rate separately? You paid the Iron Mountain its 15 cents a hundred——A. Yes, sir.

Q. And you paid the Southern Pacific its freight rate?—A. Yes, sir.

Q. But the original consignment was direct to the point of destination?—A. No, sir; never; and you cannot make me say that in forty years.

10321 Q. Show me a document showing that it was not, will you?—A. My recollection is——

Q. Show me one document showing that it was not.—A. I will see if I can find one when I get home.

Q. All right, find them. All those cars went directly through without unloading, didn't they, to the points of destination?—A. Unless something is the matter with the car, or the car was leaking, and it had to be transferred.

Q. Direct from St. Louis to Franklin or the other points of destination in Louisiana?—A. I think, as a general thing; yes, sir——

Q. In fact, the tariff——A. But not tank cars.

Q. Didn't the tank cars go through in the same way?—A. They did, but they were rehandled. I said there may have been cases where on account of leakage the contents of a box car would be transferred.

Q. Now, this tariff under which you ship, then, at 15 cents a hundred, does not authorize a shipment locally to Louisiana points, does it?—A. There is a tariff, a 25-cent tariff——

Q. I know, but you did not use that.—A. We did, on shipments to Alexandria proper.

Q. I know, but for shipments to Franklin and those points beyond Alexandria. The 15-cent rate did not authorize you to ship a car to Alexandria locally.—A. No, sir; and we never did.

Q. In fact, you did ship them direct through to the point of destination.—A. I say we never stopped a car at Alexandria——

10322 Q. Certainly not.—A. And took it into stock there. We paid 25 cents a hundred on all the oil that we shipped to Alexandria, that was used at Alexandria.

Q. When the rate was 30?—A. When it was 25 cents. I never knew that there was a 30-cent rate; never heard of it until this case.

Q. We will see about that. You never did?—A. No, sir.

Q. We will see about that in a minute. Now, the rates from Alexandria to the points in Southern Pacific territory on the Southern Pacific line in Louisiana were not filed with the Interstate Commerce Commission, were they?—A. I do not know as to what they did—the Southern Pacific.

Q. You don't know anything about it?—A. No, sir.

Q. You never made any inquiries to find out whether those were filed with the Commission?—A. No, sir. In those days I don't think——

Q. Well, in those days—I mean down to 1906.—A. Why, if I go to a railroad traffic manager——

Q. Now, answer my question.

Mr. ROSENTHAL. You go ahead and answer as you please.

WITNESS. I will. If I go to a railroad traffic manager or general freight agent and ask for a rate and he agrees to name a rate and fixes a rate and advises us that that rate is to apply on our shipments, that is enough for me. It is for him to do his part.

Q. Now, did you ask for the rates between Alexandria and those points bound below?—A. Did I ask for them?

10323 Q. Yes.—A. I asked Mr. Shrever or Mr. Bean, both gentlemen now dead.

Q. Yes.

Mr. ROSENTHAL. The correspondence shows that.

WITNESS. The correspondence shows that. I asked them if they would name us the same rates from Alexandria as we had in from New Orleans, the object being, as I said before (and I want to emphasize it), to avoid the congested condition in New Orleans and get a shorter haul for our business, and the combination of rates is just exactly the same one way as the other, as far as we are concerned.

Q. You have stated that once. You need not state it again. Please answer my question.—A. I want to emphasize it, that is all.

Q. We will call it emphasized for all time.—A. Is it strong enough?

Q. Yes; that will do.—A. Thank you.

Q. Then you asked for and got rates from Alexandria to Lafayette, St. Martinsville, New Iberia, Jeanerette, Franklin, Morgan City, Schreiver, and Opelousas, did you?—A. Yes, sir.

Q. And Crowley?—A. Whatever is named in the tariffs, certainly; named in the correspondence. Those look to be——

Q. Will you show any correspondence where those towns were named?—A. I went to New Orleans several times on this matter. It is a long time ago, and I can't tell you what——

Q. You relied on the tariffs for the rates, did you?—A. On what Mr. Lyons or Mr. Bean or Mr. Schrever, or whoever was in authority then——

10324 Q. They issued a tariff, didn't they?—A. I see they did.

Q. Did you have the tariff?—A. Not at that time.

Q. Did you afterwards?—A. I have a copy of it now.

Q. Did you have, during 1903, '4, '5, or '6, the tariff which I show you?—A. I could not answer whether I did or not positively. I could tell by looking in my files.

Q. Well, look in your files and see what you have got.—A. I mean down in the St. Louis office.

Q. I show you petitioner's Exhibits 597 and 598, which were issued in 1901, and were in force down to 1906, when they were canceled. Did you have those?—A. I can't say positively unless I go through my files and see if they are on the files.

Q. Go through your files and see what you have, will you?—A. In St. Louis?

Q. Yes.—A. I will be glad to do it, sir.

Q. And see if you have the earlier tariffs that precede those.

Mr. JOHNSON. I just want to suggest to the witness——

Mr. KELLOGG. No; it is not necessary to suggest to the witness. I think he is able to take care of himself.

Mr. JOHNSON. I want to say, Mr. Finlay, that you need not offer to produce anything here; that that is a matter for the decision of counsel. It is not for you.

Mr. KELLOGG. We will see about that. Do I understand that the counsel are in control of the tariffs of the Waters-Pierce Oil Company?

Mr. JOHNSON. I beg pardon.

Mr. KELLOGG. Are the counsel for the Waters-Pierce Oil Company in control of the tariffs, Mr. Johnson?

10325 Mr. JOHNSON. The Waters-Pierce Oil Company counsel is in control of the management of this case.

Mr. KELLOGG. But are they in control of the tariffs?

Mr. JOHNSON. We will determine whether papers will be voluntarily produced or not, Mr. Kellogg. If you want the papers, you have your remedy. I will see the papers, and in all probability there is no objection to producing them, but it is a matter that counsel will finally decide, and not the witness. That is the position I take.

Mr. KELLOGG. You do not claim that you are in possession of the tariffs, then?

Mr. JOHNSON. No, sir; but I am in control of the case so far as the Waters-Pierce Oil Company are concerned, and I will decide whether papers in possession of the company will be produced voluntarily or not. There is no objection to their production, but I do not want the witness to assume to do a thing that counsel might object to.

Mr. KELLOGG. When will I be notified whether they will be produced or not?

Mr. ROSENTHAL. In due course.

Mr. JOHNSON. Tell us what papers counsel wants, and we will examine them and decide.

Q. Now, Mr. Finlay, were you furnished tariffs for these rates from Alexandria out to these various places I name?—A. I presume we got them at some time; I don't know whether immediately or not.

Q. Did you have them between 1900 and 1906?—A. I can't tell you until I get to my files.

10326 Q. Did you make any inquiry as to whether they were filed with the Interstate Commerce Commission?—A. No, sir.

Q. Do they bear any evidence of being filed with the Interstate Commerce Commission?—A. If you will let me have them I will tell you. [Papers handed to witness.]

Mr. ROSENTHAL. The bill in this case alleges that they were filed.

Mr. KELLOGG. Oh, no; not those rates from Alexandria out.

Mr. ROSENTHAL. The 15-cent rate.

Mr. KELLOGG. I am talking about the rates beyond Alexandria.

Mr. ROSENTHAL. I understood you to say the 15-cent rate.

Mr. KELLOGG. Oh, no.

Mr. ROSENTHAL. You are speaking now about the local rates from Alexandria to points beyond?

Mr. KELLOGG. Yes.

Q. Did those tariffs from Alexandria to those points of destination in Louisiana bear any evidence of being filed with the Commission?—A. As you show them to me there, they do not.

Mr. ROSENTHAL. Those that he shows you there, you mean.

WITNESS. Those that he shows me do not.

Q. Did those you had as authority for your rate show any evidence of being filed with the Commission?—A. I don't know whether we have them.

Q. You don't know whether you ever had any rates for those?—A. I can not say without going back and looking over the files.

Q. You don't know whether you ever required any tariff for those rates from Alexandria to points in Louisiana?

10327 Mr. ROSENTHAL. That is not what he said. He said he did not know whether he had them, meaning by that, in their files.

Q. Well, did you ever have them?—A. I have something to show that those rates were to apply. Whether it is in a letter from the Southern Pacific office or in the tariff I could not say until I get back.

Q. Well, letters are not usually filed with the Interstate Commerce Commission as a tariff, are they?

Mr. ROSENTHAL. That is not what the witness said, either.

Q. Now, did you ever make any inquiry to find out whether those rates from Alexandria to points of destination were filed with the Interstate Commerce Commission at all?—A. No, sir; I never did.

Q. Never made any inquiry?—A. No, sir.

Q. Were you in charge of the freight traffic down to 1906?—A. Yes, sir.

Q. Did you have charge of the tariffs?—A. They were handled by clerks in the next room. I did not handle them myself.

Q. Are you still vice-president of the company?—A. Yes, sir.

Q. Have general charge of the office?—A. Only that portion of it that pertains to my office.

Q. What portion pertains to your office?—A. I have nothing now with the freights. Mr. Stith is in charge of the freights.

Q. Will you please produce the bills of lading or billing instructions issued by the Waters-Pierce Oil Company for the shipments of all cars shown in Government's Exhibits 602 and 599 in two sheets, now in this case?

10328 Mr. ROSENTHAL. The request is noted.

Q. Both from St. Louis and from Alexandria. Will you, Mr. Finlay?—A. If they are here.

Q. If they are where?—A. I thought I had all that would be required here. I do not know whether they are the same as you have.

Q. Will you produce them?—A. I will check them up with what I have here.

Q. It is not a question of checking them up. It is a question of producing them. Will you produce them?—A. Why, most assuredly, if I can. There is nothing we are trying to cover up or hide. Don't you forget that for a single minute.

Q. Oh, no; I am not going to forget it. If you have got them you will produce them?—A. I certainly will produce anything that I have in connection with this matter, if the attorneys want me to.

Q. If the attorneys want you to?

Mr. JOHNSON. That is, that you have with you.

WITNESS. Yes. I have all I thought I was going to need here.

Mr. JOHNSON. You say you will produce what you have here?

WITNESS. What I have here. I said I will check it with what I have here.

Q. No; will you produce them if you have them in your office. That is the point.

Mr. ROSENTHAL. Why, we have already——

WITNESS. I have not the bills of lading, I will tell you that, away back 15 years ago.

10329 Q. Where are they? I am not talking about 15 years ago.—A. Ten years ago?

Q. No, not ten years ago, I am not talking about. These shipments were made within the last four or five years.

Mr. ROSENTHAL. Which shipments are you now talking about; the shipments stated in the indictment that is pending against the Waters-Pierce Oil Company at St. Louis?

Mr. KELLOGG. No, sir; I stated, Mr. Rosenthal, the shipments stated in certain exhibits in this case.

Mr. ROSENTHAL. Are they identical with the shipments stated in the indictment in St. Louis?

Mr. KELLOGG. I do not know anything about any indictments at all. I am referring to the shipments——

Mr. ROSENTHAL. If you are now seeking to make the Government's case in connection with a criminal prosecution, I beg to assure you that they will not be produced.

Mr. KELLOGG. I am now asking for the bills of lading of the shipments shown on two exhibits in this case, 599 in two sheets, and 602, which were put in evidence last winter, and which you have and have had ever since.

Mr. ROSENTHAL. You mean which exhibits we have?

Mr. KELLOGG. Which exhibits you have, and those exhibits show the car numbers, the point of origin and destination, and I wish the bills of lading, both from St. Louis—East St. Louis—to Alexandria and from Alexandria to the points of destination.

Mr. ROSENTHAL. Well, your request will be given due consideration.

10330 Mr. KELLOGG. Now, I would like to know from this witness if he will produce them.

Mr. ROSENTHAL. The witness will produce anything that his counsel advises him to produce that he has within his possession and control.

Q. Now, what did you say was your previous rate from St. Louis to New Orleans?

Mr. ROSENTHAL. East St. Louis to New Orleans?

Q. East St. Louis to New Orleans.—A. 18 cents a hundred.

Q. And the Southern Pacific made the same rate from Alexandria to these points of destination as they had previously made from New Orleans to these points of destination?—A. Yes, sir.

Mr. ROSENTHAL. They made you a rate which was equivalent——

A. The combination of the rates was the same either way. There was nothing in it to us, not a penny, if that is what you want to get at.

Q. There was 3 cents difference, wasn't there?—A. That was an allowance for pumping and transferring the oil across the river through pipe lines, switching cars in and out of the works on both sides of the river.

Mr. ROSENTHAL. Pardon me for interjecting there. You mean transporting the oil or pumping the oil from East St. Louis to St. Louis?

A. To our works at St. Louis.

Mr. ROSENTHAL. To your works at St. Louis, and there loading it on cars.

10331 WITNESS. Yes, sir; repumping it from the storage tanks into the tank cars.

Mr. ROSENTHAL. And the difference of 3 cents was due to that.

WITNESS. Due to the expense we were put to and the bridge arbitrary that the roads would have had to pay out of the 18-cent rate if the shipments originated in East St. Louis.

Mr. ROSENTHAL. What was that bridge arbitrary?

WITNESS. 3 cents I believe it was at that time—whatever it was.

Q. Now, as a matter of fact, you applied the 15-cent rate from East St. Louis, didn't you, on these shipments?—A. From East St. Louis?

Q. Yes, sir.—A. Never. We did not intend to, if we did.

Q. As a matter of fact, did you not, in many of these shipments shown on Exhibits 599 and 602, actually make those shipments from East St. Louis and pay only 15 cents a hundred for them?—A. There was an error in checking the bills. At least the bills were not checked. They were checked out, it is true—they were checked out as they were rendered, but they were afterward corrected, and I think the corrections are here.

Q. Corrected so that you got enough *enough* to make it an even 15 cents a hundred?—A. No, sir; we paid.

Q. You paid 15 cents a hundred?—A. We paid the equivalent of 15 cents a hundred.

Q. So that you paid it back to the railroad company?—A. We paid it back to the railroad company.

Q. That was after Mr. Schindler had examined it and found it, wasn't it?—A. The bills came in to us from the railroad office.

10332 Q. When did those bills come in?

Mr. JOHNSON. Let him explain.

WITNESS. Wait a minute. I will give you all of it and keep nothing under.

Mr. JOHNSON. Do not cut him off.

WITNESS. The bills were brought to me—I can not recall what month, but in the early part of 1906—by one of the clerks in the traffic department. I told him to check them up and see—check the bills up and see if we had paid the pipe-line allowance, if it was not a mistake in the bills being put through at the same rate from East St. Louis as from St. Louis. We should have paid 15 cents from East St. Louis, the shipments originating in East St. Louis. If they had originated at our works in St. Louis, the allowance would have been made for the pipe-line charge.

Q. Now, let me see if I understand——

Mr. ROSENTHAL. How many of those shipments were there?

A. Oh, I suppose—I don't remember—I suppose a dozen. They are insignificant. They are so small that it is wasting——

Mr. ROSENTHAL. What was the amount involved?

WITNESS. Oh, in dollars and cents it is picayunish.

Mr. ROSENTHAL. A couple of hundred dollars?

WITNESS. I suppose a couple of hundred dollars.

Mr. ROSENTHAL. In connection with shipments extending over 15 years and involving the payment of thousands of dollars of freight charges.

WITNESS. The bills should never have been passed through, only by oversight of this clerk, who was checking thousands of bills.

10333 Q. Now, let me proceed. You say the rate applied from East St. Louis, do you?—A. Which rate?

Q. The 15-cent rate. Did it apply from East St. Louis or St. Louis?—A. The 15-cent rate was from St. Louis.

Q. From St. Louis directly?

Mr. ROSENTHAL. You misspoke yourself, I think, before.

Q. You said East St. Louis.—A. No; the 18-cent rate I said, East St. Louis.

Q. Very well, the 15-cent rate from St. Louis. Now, did you have any tariff for an 18-cent rate from East St. Louis?—A. In the early days the Illinois Central——

Q. I am talking about 1901, '2, '3, '4, '5, and '6. Did you have any tariff for 18 cents from East St. Louis?—A. I do not recall whether we did or not. I could not tell until I went back over the files. There was a rate in. I know that.

Q. Of 18 cents?—A. Yes, sir.

Q. Where is your tariff for it?—A. We made the shipments, and the prepaid expense bills speak for themselves.

Q. What is the bridge charge between St. Louis and East St. Louis?—A. It has been 3—as high as 3 and as low as a cent and a half.

Q. It is a cent and a half, and has been for years, hasn't it?

Mr. ROSENTHAL. Oh, no; you are entirely mistaken about that.

WITNESS. I do not know as to that.

Q. What was it in 1903 and '4? What has the bridge charge been since 1900?—A. I think it has varied at different times. The allowance that was made to us was to cover our expenses of

10334 unloading the cars in East St. Louis, pumping the oil from the cars into the storage tanks, and repumping through the pipe-line across the river into the storage tanks on the St. Louis side, and repumping from the storage tanks into the tank cars, in addition to switching——

Q. And the railroad——A. I will answer your question before you come at me again. There was a time when the rate applied from both sides of the river, and the railroads had to account to the bridge for a portion of that charge. What it was I could not say now. The railroads saw fit to make that allowance to us. That was a matter with them.

Q. The railroads allowed you 3 cents a hundred, did they?—A. That they would have had to pay——

Q. Did the railroad allow you 3 cents a hundred for the handling of the oil from East St. Louis to St. Louis, when it did not come

across in tank cars?—A. Yes, sir; for the handling of the oil from East St. Louis to St. Louis and out again.

Q. Now, have you got your explanation made?—A. I hope it is as clear to you as it is to me.

Mr. ROSENTHAL. Now, was that allowance made on a tariff which was issued by the railroad companies?

WITNESS. Why certainly, they issued a tariff.

Q. Where is it?

Mr. ROSENTHAL. I am very glad you brought that out. We have that here.

WITNESS. I think it is here somewhere. Mr. Stith, have you got that? You had it in your package—that pipe line allowance, crossing the river at St. Louis.

10335 Mr. ROSENTHAL. Here is a copy of the cent and a half allowance of 1903 [handing paper to witness].

WITNESS. Here is a copy of the allowance of 1903 [handing the paper to Mr. Kellogg].

Q. That was a cent and a half a hundred, wasn't it?—A. Yes, sir.

Mr. ROSENTHAL. At that time?

WITNESS. At that time.

Mr. ROSENTHAL. Mr. Stith advises me theretofore it was 3 cents.

Mr. KELLOGG. Yes.

Q. Now, after 1903 it was a cent and a half a hundred, was it?

Mr. ROSENTHAL. I think with the exception of two weeks (that appeared in the Alton case), when it went up to 2 cents.

Q. Practically the entire period after 1903 it was a cent and a half a hundred?—A. I believe so; yes.

Q. You were not allowed, then, 3 cents a hundred after that?—A. Not after that.

Mr. ROSENTHAL. You were allowed whatever the tariff allowed you?

WITNESS. Whatever the tariff allowed.

Mr. ROSENTHAL. I will give you the reference number of the I. C. C. preceding that, which allowed 3 cents. I. C. C. No. 240, effective February 4, 1902, which provides for an allowance of 3 cents per 100 pounds between St. Louis and East St. Louis.

Mr. KELLOGG. What time was that?

Mr. ROSENTHAL. As late as February 4, 1902. That was

10336 filed with the Interstate Commerce Commission, making an allowance of 3 cents.

Mr. KELLOGG. But after 1903 it was a cent and a half a hundred?

Mr. ROSENTHAL. That is my recollection of it, with the exception of two weeks.

Q. Now, this tariff which you had, of 15 cents a hundred from St. Louis proper, Missouri, to Alexandria, was 15 cents a hundred, wasn't it [handing witness paper]?—A. Yes, sir; St. Louis, Missouri, to Alexandria.

Q. It was not 13½ cents a hundred from St. Louis, was it?—A. No, sir; and we never paid 13½ cents from St. Louis.

Q. Did you not pay on a large number of shipments, from 1904 to 1906, 13½ cents a hundred on oil that was shipped from East St. Louis through St. Louis to Alexandria?—A. As I said before, there were some bills that were passed by mistake by some of the clerks at 13½, because the pipe-line allowance was allowed on the expense bill when it should not have been, and afterwards the expense bill was rendered to us and was submitted to me for my approval as to whether it should be paid or not, and I told them to look up and see what they had paid before, and if they had paid anything less than 15 cents to pay them the difference, and the bills were paid.

Q. You paid it back to the railroad company?—A. Yes.

Mr. ROSENTHAL. Amounting to how much?

WITNESS. A couple of hundred dollars. I don't believe it was that much.

10337 Q. Now, those were for cars shipped during 1904, 1905, and 1906, were they not [handing witness paper]?—A. If that is a copy of what I have here, or did have a minute ago.

Q. Well, were some of them for cars shipped during 1904, 1905, and 1906?—A. I could not answer as to how far back it was previous unless I went over the expense bills.

Q. Look at the expense bills and find out.

WITNESS. Mr. Stith, have you those cent and a half pipe-line charges there?

Mr. STITH. I don't think I have.

Q. There is a list of shipments made by the Waters-Pierce Oil Company, showing a rate of 13½ cents a hundred, commencing sometime in 1904, which is an exhibit in this case—Petitioner's Exhibit 599. Did you make such shipments and pay 13½ at the time they were made?—A. May I ask if this is a copy of that which we have had?

Q. Yes; you have had a copy of the exhibit.

Mr. ROSENTHAL. They have not had a copy of it.

Mr. KELLOGG. Well, you have; I suppose they had also.

WITNESS. I do not know.

Mr. ROSENTHAL. You have nothing here, Mr. Finlay, as I understand it, by which you can check that up?

Mr. KELLOGG. Yes; you have had a copy of that all the time.

Mr. ROSENTHAL. It has been an exhibit in the case.

Mr. KELLOGG. That is what I say. Counsel have had it.

Mr. ROSENTHAL. I have had it, but Mr. Johnson has not

10338 had it, and Mr. Finlay has not had it.

Q. Did you make shipments in 1904 on which you paid 13½ cents from St. Louis to Alexandria destined to points beyond?—A. I do not know whether it was 1904. There were some shipments previous to 1906.

Q. Several years previous, too, weren't they?—A. I don't know as to that. My recollection is it was only a short time previous. I cannot tell without going back to the expense bills.

Q. Have you the expense bills with you?—A. I do not know whether they are here or not.

Q. Well, look and see.

Mr. JOHNSON. Now one moment, Mr. Kellogg.

(Counsel for defendants confer.)

Mr. ROSENTHAL. We have certain expense bills here which we will be very glad to submit to the Government for inspection, with the understanding, however, that any document that we submit to the Government for inspection at this time may be put in by the Government, if it sees fit to put it in, when the Government is on its redirect. We object to furnishing the Government everything that it sees fit to call for, and having our defence encumbered with everything that the Government may undertake at this time to put in. But we offer now to submit to the Government, either to its counsel or to Mr. Durand or to any one selected by the Government counsel, any of these expense bills or any other document we may have here, but we shall not turn them over to the Government at this time for the

10339 purpose of enabling the Government to put them in at this time, but on a request when the Government comes to its redirect we will very cheerfully turn them over, anything that we now submit for inspection.

Mr. KELLOGG. I shall not agree not to put them in as part of the cross-examination of this witness.

Mr. ROSENTHAL. Very well. Then, we shall have to decline to furnish you cartloads of such by which our defence may be encumbered and enlarged.

Mr. KELLOGG. Well, wait until I ask for a cartload.

Mr. ROSENTHAL. You have been asking for carloads, not cartloads.

Q. Now, Mr. Finlay, I notice here, during 1904, that you shipped from St. Louis various carloads and paid 13½ cents a hundred, and I show you the Government exhibit showing the carloads and the payment, the amount. Is that the amount that you paid?—A. As to whether the cent and a half that we paid some time after this date applies on these particular shipments I do not know; but I do know that we did pay and wanted to pay every cent that we were entitled to pay by the tariffs, and if we did not pay it it was a mistake in the checking of the bills.

Q. Did that mistake run over two or three years—1903, 1904, and 1905?—A. I could not tell unless I saw the prepaid bills and checked them with this statement.

Q. Well, have you got those prepaid bills?—A. I do not know.

Q. Will you look and see whether you have them here with you or not?—A. If counsel wish me to.

Q. Well, I ask for them.

10340 Mr. ROSENTHAL. You will not get anything of that kind, Mr. Kellogg, excepting along the lines that I have just indicated.

Q. Is it a fact, sir, that you did not pay back——

Mr. ROSENTHAL. I will tell you what we will do. If you will agree to let us have all the time we may require to put in our defence, why, we will turn these things over to you now; but we are not going

to let you cross-examine ad libitum and put in all sorts of documents that at this time may require explanation on our part, and in that way consume all of the time that we have.

Q. Please examine your papers and see if you paid to the railroad company an additional cent and a half a hundred on the shipments that were shipped at 13½ cents in 1904.

Mr. ROSENTHAL. Now, we shall have to instruct the witness that he is under no obligation whatever to examine anything that is not before him, at the request of cross-examining counsel.

Q. Is it not a fact, sir, that you made those payments after you were indicted in the Federal court—after the Waters-Pierce Oil Company was indicted—for shipping at less than the tariff rate?—A. When were they indicted?

Q. Please answer the question.—A. I don't know when they were indicted.

Q. Is it not a fact that you made those payments after the Waters-Pierce Oil Company were indicted for shipping at less than the 15-cent rate?

Mr. ROSENTHAL. The witness has already said he does not know.

10341 A. I don't know. If you will give me the date. My recollection is that it was sometime along the early part of 1906, probably January or February, I don't remember. But the expense bills will speak for themselves.

Q. Wasn't it in November, 1906?—A. Oh, I don't think it was back that far. November, 1906? I said the early part of 1906.

Q. I said wasn't it, as a matter of fact, in November, 1906, when the payments were made?

Mr. ROSENTHAL. He has stated that his recollection is that it was in the early part of 1906.

Q. Have you the expense bills with you in court?—A. I do not know.

Q. Did you bring them with you?—A. I don't know whether Mr. Stith did or not.

Q. Will you look and see?—A. If counsel tell me to.

Q. Is it not a fact that you did not make any payments until after the Department had examined into these shipments?—A. I do not know as to that. The excess cent-and-a-half bills were submitted to me after a check had been made in the auditor's office, most likely, because that is where those things are caught, and I was asked what should be done with them. I said: "Check them up and see if they have been paid. If we have not paid the full 15 cents, pay it." My instructions, I would like to say most emphatically, ever since I have been in charge of traffic matters, my instructions to those under me were to pay whatever the tariffs called for. If there was anything due us on the rendering of expense bills, to claim it; if it was due the railroad company, give it to them.

10342 Q. Were shipments made in 1903 at the 13½-cent rate, which were afterwards corrected?—A. I could not say as to the dates that those excess bills were paid.

Q. When did you look up those questions so as to know when you paid those back?

Mr. ROSENTHAL. What questions?

Mr. KELLOGG. These shipments?

A. The expense bills, as I say from my recollection, were brought to me in the early part of 1906 to know whether or not we should pay them, and the clerk who examined the original prepaid bill reported that we had only paid the 13½ cents. I said, "That is a mistake."

Q. Have you ever seen those expense bills since 1906?—A. I think possibly I have.

Q. When?—A. I don't recall whether it was a year ago or——

Q. Did you see them just previous to coming up here this time?—A. No, sir; I did not.

Q. You don't know whether they are here with you or not?—A. I don't know whether they are there or not. There was a lot of expense bills there. I don't know whether those are there or not.

Q. And you decline to look and see?—A. Mr. Stith took one package and I took the other.

Q. You decline to look and see?

Mr. ROSENTHAL. I instruct him not to.

A. The counsel instruct me not to.

Q. And so you decline?—A. On advice of counsel. Is that a proper phrase?

10343 Mr. ROSENTHAL. We will let Government counsel look for themselves under the limitations that I have imposed.

Q. What do you ship into Louisiana besides refined oil?—A. Lubricating oils, linseed oils, axle grease, all sorts of grease other than axle grease.

Q. Supplies, machinery, tanks?—A. Only occasionally a storage tank, if we are erecting a new station.

Q. Do you have tariffs for those, or did you ship them without any tariff?—A. I think the Western Classification tariff covers that.

Q. Then you have a tariff showing class tariffs and commodity tariffs on other things than refined oil?—A. Where the goods are not covered by commodity rates we refer to the classifications for them.

Q. Do you make shipments under the tariff which I show you, effective August, 1904 [handing witness paper]?—A. I presume, if that was the tariff that was in effect at that time, we made the shipments under them.

Q. Well, through freight tariff No. 16–H, classes and commodities?—A. Yes, sir. If we made shipments through to points of destination we would follow this tariff.

Mr. ROSENTHAL. If that was the effective tariff.

WITNESS. Yes; if that was the effective tariff.

Mr. ROSENTHAL. And there was no other?

WITNESS. Of course we only went by that 15-cent Alexandria tariff

Q. I am talking about other things. You are familiar with that tariff, are you?—A. No; I didn't pay any attention to it.

10344 Q. When you had charge of the traffic, didn't you pay attention to the tariff?—A. The clerks in the other room had it.

Q. Well, you were in charge of the traffic for years?—A. Oh, yes; so is Mr. Stith the head of his traffic department, but he doesn't check everything that is in his office.

Q. I know, but he was familiar with the tariff, wasn't he, as you were?—A. In a general way. I was familiar with that which interested us most, and that was petroleum oil.

Q. Now, were you familiar with this class commodity tariff, through freight tariff No. 16, issued by a large number of roads in the Southwest?—A. I don't know that I ever saw the tariff before. I could not tell you whether I saw that.

Q. Do you have it in your office?—A. I don't know whether it is there or not; I don't know whether it has ever been there.

Q. Did you have a regular traffic department in the Waters-Pierce Oil Company during the time you were at the head of that department?—A. Yes, sir; there were clerks.

Q. How many clerks did you have in that department?—A. At that time there were only three, I believe. Now there are——

Q. In 1904?—A. In 1904. I don't believe there were more than that. There may be eight or nine now.

Q. There were three in 1904 and 1905?—A. Yes.

Q. Besides yourself. What were their duties?—A. To check the expense bills by the rates that were provided to cover shipments.

Q. How were the rates provided—by tariffs?—A. By a commodity tariff.

10345 Q. And also by class tariffs where you had shipped on class rates?—A. On class tariffs class rates would apply.

Q. You had to have the tariffs in order to check them up, hadn't you?—A. I presume whatever tariff was in the office at that time was in the office to check by.

Q. I show you through freight tariff No. 16, classes and commodities, issued by all the lines in that southwestern territory out of St. Louis and East St. Louis, and ask you if you had that tariff in your office.

Mr. ROSENTHAL. He has already answered that he does not know that he ever saw that tariff, that he does not know whether it was in his office or not.

A. I can't say whether we had or not. I have no recollection of seeing that particular tariff.

Q. Well, you usually had the tariffs that applied from St. Louis, hadn't you?—A. They were handled in the department where the freight bills were checked.

Q. And you were at the head of that department?—A. In a general way, but not in the checking of the bills.

Q. Well, I didn't suppose you did the clerical work of checking the bills.—A. No. I have done it many years ago.

Q. But you were at the head of the traffic department, weren't you?—A. Yes, sir.

Q. During all the time from 1900 down to the time that Mr. Stith took that position?—A. Yes, sir.

Q. When was that?—A. I think May of this year, wasn't it, Mr. Stith?

Mr. STITH. April of this year.

10346 WITNESS. April, 1908.

Q. Now, did you in your department keep the tariffs effective on oil and the other products which you shipped out of St. Louis and East St. Louis?—A. They were kept in the department where the bills were checked.

Q. I ask you if this tariff did not make a rate on oil from St. Louis and East St. Louis to the same destinations which I read you, to wit: Opelousas, Lafayette, St. Martinville, New Iberia, Jeanerette, Franklin, Morgan City, Schriever, and Crowley, varying from 36 to 40 cents per 100 pounds?

Mr. ROSENTHAL. Doesn't the tariff speak for itself?

Mr. KELLOGG. Let the witness look and see.

Mr. ROSENTHAL. Mr. Witness, before answering that question—that is a very large tariff—I suggest that you examine it with care, if the answer is insisted upon. Is the tariff offered in evidence, or has it been?

Mr. KELLOGG. It has been testified to by Mr. Durand, but the whole tariff was not offered.

(The witness, counsel for defendants, and others on the defendants' side of the table examine the tariff.)

Mr. ROSENTHAL. The witness has examined it casually now and is ready to answer, but asks leave to examine it more carefully during the noon recess.

(The following question was read: "I ask you if this tariff did not make a rate on oil from St. Louis and East St. Louis to the same destinations which I read you, to wit: Opelousas, Lafayette, St. Martinville, New Iberia, Jeanerette, Franklin, Morgan City,

10347 Schriever, and Crowley, varying from 36 to 40 cents per 100 pounds.")

A. I can't tell what the through rate would be, because there is a clause here, on page 29, which applies to the maximum charge, and reads: "The maximum charge from points will be combination of local rates on New Orleans, Louisiana." Where the rate is lower it takes precedence over any——

Q. Wait a moment.

Mr. ROSENTHAL. Don't wait. Finish your answer. Over what?

WITNESS. Over any other rate in existence.

Mr. ROSENTHAL. So that that tariff on page 29 qualifies itself?

WITNESS. Yes.

Q. I show you page 8 of this tariff and ask you if it does not name a rate from St. Louis, Missouri, East St. Louis, Illinois, to Crowley, Louisiana, of 40 cents per 100 pounds on oil?

Mr. ROSENTHAL. You mean whether on page 8 of that tariff there appears certain language which apparently names a rate there?

Mr. KELLOGG. I mean just exactly what I say.

Mr. ROSENTHAL. Well, the witness has already called your attention to page 29.

Q. Please look at page 8 and answer the question.—A. You can't take one part of any tariff without taking the other.

Q. I have not asked you to take any one part. I have asked you if on page 8 the tariff does not name a rate from St. Louis
10348 and East St. Louis on oil of 40 cents per 100 pounds to Crowley, Louisiana?

Mr. ROSENTHAL. Now, Mr. Witness, you have a right to consider the whole tariff in connection with that answer.

WITNESS. On page 29 there is a rule applying the maximum charge, it being the general custom to apply, where the sums of the locals are less than any other rate provided for, to provide the sums of the locals. Therefore, not knowing the sums of the locals in this particular case——

Q. Does page 8 make a rate of what I stated—40 cents per 100 pounds?—A. You can not consider one part without the other.

Q. Do you decline to answer the question?

Mr. ROSENTHAL. No, he does not decline; he has answered it.

WITNESS. I have answered it.

Q. Isn't it a fact, sir, that the Missouri Pacific road published rates, from 36 to 40 cents per 100 pounds, on oil in their tariffs, and filed them with the commission, to Opelousas, Lafayette, St. Martinsville, New Iberia, Jeanerette, Franklin, Morgan City, Schriever, and Crowley, and only to those points, those being the points named in your secret rates, and that they were made for the very purpose of preventing the public from finding out those rates, and you knew it? Isn't that a fact?

Mr. ROSENTHAL. I object to the question.

A. I would like to answer you just as I feel.

Q. Answer it.

Mr. ROSENTHAL. Oh, no; I object to the question for the reason that it is involved; it embodies a number of questions in one
10349 question; and for the further reason that the witness has already answered it; and for the further reason that it assumes that there were secret rates when there is not any evidence in this case to that effect; and for the further reason that you are asking for the contents of a document which document is before the witness and which explains itself.

Q. Will you answer the question?—A. I have already answered the question.

Mr. KELLOGG. That is all, sir.

Mr. ROSENTHAL. We would like to take that tariff during the noon recess.

Mr. KELLOGG. Yes, sir [handing tariff to Mr. Rosenthal].

Mr. ROSENTHAL. We want to make a more thorough examination than we have before determining whether we shall ask Mr. Finlay anything further.

The EXAMINER. That is all for Mr. Finlay, is it?

Mr. ROSENTHAL. That is all at this point; yes sir.

The EXAMINER. You will return at 2 o'clock.

(A recess was here taken until 2 o'clock p. m.)

10350 AFTERNOON SESSION.

ANDREW M. FINLAY, recalled, testified as follows:

By Mr. KELLOGG:

Q. Mr. Finlay, did you ship oil from St. Louis or East St. Louis to Shreveport, Monroe, West Monroe, and Boyce, Louisiana?—A. We did to Shreveport and Monroe. I don't say to Boyce.

Q. What rates did you pay to Shreveport and Monroe and Alexandria?—A. When?

Q. Well, during 1905.—A. I do not recall. Whatever the tariffs called for.

Q. I show you a tariff——A. Before I look at the tariff, I think it was 25 or 30 cents; I do not recall which.

Q. 30 cents, I think, Mr. Finlay. Look at I. C. C. No. 1, Louisiana Freight Committee Tariff No. 1, effective October 25, 1905, on page 27, and see if the rate to each one of those towns was not 30 cents.

Mr. ROSENTHAL. What tariff is that, Mr. Kellogg?

Mr. KELLOGG. It is the Louisiana Freight Committee Tariff, October, 1905; the St. Louis, Iron Mountain & Southern and the Southern Pacific lines are parties to it.

A. 30 cents seems to be the rate provided for.

Q. Is that the rate you paid to Monroe and Shreveport?—A. I judge that is the tariff that was in at that time.

Q. Now that same tariff names a rate to Alexandria of 30 cents, doesn't it?—A. It is quoted here at 30 cents to Alexandria.

Mr. ROSENTHAL. Are there any qualifications? Have you
10351 examined the tariff with a view to determining that?

WITNESS. Only the reading of the tariff here.

Mr. ROSENTHAL. Only the reading of that page of the tariff?

WITNESS. Only that page of the tariff; that is all.

Mr. ROSENTHAL. Have you examined the tariff as a whole to determine whether it is in any wise qualified?

WITNESS. No.

Mr. ROSENTHAL. How many pages are there there?

WITNESS. Oh, it is a raft of stuff—113 pages.

Q. I show you the tariff that preceded that, issued by the Missouri Pacific Railway, effective July 1, 1903, naming rates to Shreveport, Monroe, West Monroe, Alexandria, and Boyce, Louisiana, page 5, and ask you if the rate named is not 30 cents.

Mr. ROSENTHAL. What tariff is that—the same tariff that you had this morning?

Mr. KELLOGG. No; it is the tariff preceding the last one I showed, issued by the Missouri Pacific, naming a rate of 30 cents to all those places.

Mr. ROSENTHAL. Let me see that a minute.

Mr. KELLOGG. Mr. Durand described those tariffs in his testimony.

WITNESS (looking through the tariff). I am trying to find where this tariff reads from. It is "to."

Q. Right at the head of the page it reads "from."—A. I don't find it.

Q. It says right here "From St. Louis" [pointing on the
10352 tariff].—A. From St. Louis-Kansas City territories.

Q. Yes; to Shreveport and those other towns.—A. Yes, sir.

Q. That names a rate of 30 cents, doesn't it?—A. Yes; that names a rate of 30 cents.

Q. Is that your recollection, that the rate from Shreveport to Monroe was 30 cents?—A. It was either 25 or 30; I don't recall which.

Q. Those are commodity rates, aren't they? That is not a class tariff that you read from?—A. I didn't look all the way through it, but it seems to be commodity. Commodities are mentioned.

Q. That 30-cent rate on oil was a commodity rate?—A. That was a commodity rate on oil.

Q. Now, the rate preceding that, that I showed you, was also a commodity rate, wasn't it?—A. I believe so. My recollection is that those rates were commodity rates.

Q. Dated July 1, 1903?—A. Yes, sir.

Q. Alexandria is named in that, isn't it?—A. Yes.

Q. A rate of 30 cents. Then, you did have a rate to Shreveport, Monroe, and Alexandria of 30 cents a hundred?—A. I don't know whether it was 25 or 30.

Q. Well, you know that is 30, don't you?—A. That tariff says 30.

Q. By the way, did you have those tariffs in your office?—A. I do not know, sir.

Q. Well, those are important tariffs, aren't they?—A. I don't know whether they would be now or not.

10353 Q. I mean at that time. I am talking of at that time.—A. We knew the rates, whatever they were, 25 or 30 cents, to Shreveport and Monroe. We knew the rate was 15 cents. Beyond that I would pay no further attention to it.

Q. Do you know of any tariff naming a rate of 25 cents to Shreveport and Monroe?—A. As I have said before, the rate was either 25 or 30 cents.

Q. I asked you if you knew of any tariff making a 25-cent rate to Shreveport or Monroe during those times?—A. I am not sure whether it was 25 or 30. I know that we paid 25 or 30 on shipments to Shreveport and Monroe.

Q. Didn't you have a combination of rates to Jonesboro, Arkansas, and from Jonesboro, Arkansas, to Marshall, Texas, and distributing rates out of Marshall?—A. No, sir; not that I know of.

Q. You have no recollection of any such rate?—A. No, sir.

Redirect examination by Mr. ROSENTHAL:

Q. I forgot to ask you a question while you were on the direct. In the conduct of your office in connection with traffic of the Waters-Pierce Oil Company, were you in complete charge of that, or did the Standard Oil Company have anything to do with it?—A. I was in complete charge so far as the rates were concerned, or the shipments or anything else in conection with the business.

Q. Was the business in any wise controlled by the Standard Oil Company?—A. Not at all.

10354 Recross-examination by Mr. KELLOGG:

Q. How many years back do you mean?—A. Ever since I have been in charge of the traffic.

Q. When was that?—A. 20 years ago.

Q. During none of that time the Standard Oil had anything to do with it?—A. No, sir.

Q. Did you consult with Mr. Felton about the question of rates?—A. No, sir.

Q. Or Howard Page?—A. No, sir.

Q. You were traffic manager of the old Waters-Pierce Oil Company and of the new Waters-Pierce Oil Company?—A. Yes, sir.

Q. When did the new Waters-Pierce Oil Company commence business?—A. May 29, 1900, I believe.

Q. In 1900 you organized a new Waters-Pierce Oil Company?—A. Yes, sir.

Q. What was the object of that?—A. Ask the lawyers.

Q. You don't know?—A. No, sir.

Q. Was it because the old Waters-Pierce Oil Company was excluded from Texas?—A. Ask the lawyers.

10355 W. C. STITH, called on behalf of defendants, being duly sworn, testified as follows:

Direct examination by Mr. ROSENTHAL:

Q. Your full name, please?—A. My full name is Wilmer C. Stith; residence, St. Louis; traffic manager of the Waters-Pierce Oil Company.

Q. And have been for how long?—A. Since the 14th of April, 1908, this year.

Q. Prior to that what was your occupation?—A. Prior to that, up to December 1, 1907, for the previous nine years, I was the freight traffic manager of the Missouri Pacific and the St. Louis, Iron Mountain & Southern Railway; and prior to that, back to 1892, I was the general freight agent of the Missouri Pacific and Iron Mountain lines.

Q. Do you remember when the Iron Mountain went into Alexandria?—A. Yes, sir.

Q. About 1894, was it?—A. I think it was a little bit previous to 1894.

Q. You were then the general freight agent of the Iron Mountain?—A. In 1894 I was the general freight agent of the Iron Mountain; yes, sir.

Q. With headquarters at St. Louis?—A. Yes, sir.

Q. Where had that line been extended from to get to Alexandria?—A. That line had been extended from a point immediately west of Arkansas City, Arkansas, known as "McGeehee;" southward through Monroe to Alexandria.

10356 Q. That was a distance of about how many miles?—A. The distance from St. Louis to Alexandria, if I recall it correctly, is 696 miles.

Q. Prior to that extension of the Iron Mountain to Alexandria, did the Iron Mountain handle any Alexandria traffic?—A. I think it did, some.

Q. How would it get it there?—A. It would be taken out through Texarkana in connection with the Texas Pacific Railroad.

Q. But from 1894 on it had its own rails running to Alexandria?—A. Yes.

Q. You knew of the Waters-Pierce Oil Company at that time?—A. Yes.

Q. Now, they had a large volume of traffic——A. Yes.

Q. Into that territory?—A. Yes.

Q. After the line was extended into Alexandria, did you solicit for the Iron Mountain from the Waters-Pierce that traffic?—A. Yes, sir.

Q. Whom did you see in that connection?—A. I saw Mr. Finlay, and I think I also saw Mr. Pierce at one time.

Q. Do you remember the talk you had with Mr. Finlay at that time?—A. Well, not in distinct terms. I remember going to see him and asking him to give the Iron Mountain a share of its business for Louisiana points. I do not remember the details of the conversation.

Q. Do you know what the East St. Louis and New Orleans rate then was on petroleum?—A. To the best of my recollection it was 18 cents.

10357 Q. You have examined the correspondence I put in evidence this morning, Defendants' Exhibits 189-A to 189-M, have you not?—A. I can not identify it from that number, but I did examine some correspondence, and I think it is the file of papers that you have reference to; yes, sir.

Q. Being a series of letters passing between you and Mr. Finlay——A. Yes.

Q. In connection with the St. Louis-Alexandria rate?—A. Yes, sir.

Q. Did that correspondence grow out of the conversation that you and Mr. Finlay had?—A. Yes.

Q. Did you finally put a rate in there—St. Louis to Alexandria?—A. Yes.

Q. What was the rate?—A. The rate was, I think, 15 cents a hundred, put in in the latter part of 1894.

Q. Did the making of that 15-cent rate bear any relation to the then existing New Orleans rate on petroleum?—A. Yes.

Q. Will you explain that?—A. That 15-cent rate from St. Louis to Alexandria, coupled with the rates that I understood had been made from Alexandria to points of destination on the Southern Pacific Railroad in Louisiana, would equalize the charges which were made on similar traffic if moved over the rails of lines east of the Mississippi River. If the traffic moved over those rails east of the Mississippi River, the Iron Mountain would receive no benefit from it, and hence they established this 15-cent rate from St. Louis to Alexandria as a proportional tariff on these Louisiana shipments for the purpose of securing the haul of a portion of the traffic.

10358 Q. And by reason of the establishment and the filing of that rate did you get the traffic?—A. Yes.

Cross-examination by Mr. KELLOGG:

Q. Mr. Stith, I show you petitioner's Exhibit 596. Is that the tariff you put in, the 15-cent tariff, St. Louis to Alexandria, on business destined beyond?—A. That is one of the tariffs that was put in.

Q. Well, that is the one put in in 1895?—A. No; 1896, Mr. Kellogg.

Q. 1896. There was one in 1894 just like it, wasn't there?—A. I am inclined to think, Mr. Kellogg, that the one in 1894 probably did not have the I. C. C. number on it. Otherwise I think it was just the same as this.

Q. In 1896 the roads commenced to put I. C. C. numbers on, didn't they?—A. I was trying to determine why this was reissued.

Q. Prior to that there was a 15-cent tariff put in the same as that, with the exception of the I. C. C. number?—A. I think that is so. I could not tell, of course, without having the other tariff before me to determine what the differences were.

Mr. ROSENTHAL. The 1894 tariff has the I. C. C. number on.

Mr. KELLOGG. It has. Mr. Stith thought it had not.

Mr. ROSENTHAL. It shows it was filed. It says to I. C. C. December 1, 1894.

Mr. KELLOGG. I do not dispute its being filed. That is shown already in this case. That tariff was from St. Louis to

10359 Alexandria a proportional tariff on business going beyond Alexandria, wasn't it?

WITNESS. The one you have in your hand?

Mr. KELLOGG. Yes, sir.

Mr. ROSENTHAL. Was it a proportional tariff, or was it a tariff?

Mr. KELLOGG. What he calls a proportional tariff.

WITNESS. It was in the nature of a proportional tariff in the fact that it named to Alexandria on traffic going to points beyond.

Mr. KELLOGG. What you would commonly call a proportional tariff?

WITNESS. What is known as a proportional tariff.

Q. Now, that did not name a 15-cent rate from East St. Louis, did it? [Handing witness paper.]—A. No. This tariff reads St. Louis to Alexandria.

Q. Did you not in 1904, 1905, and 1906 ship oil from St. Louis, which came from East St. Louis, for 13½ cents a hundred under that tariff?—A. I do not know.

Q. You don't know?—A. No, sir.

Q. Have you ever had it called to your attention?—A. Not in that way.

Q. In what way did you have it called to your attention?

Mr. ROSENTHAL. Well, that is a pretty broad question. He might have had it called to his attention by the filing of the bill in this case.

Q. I have heard it spoken of here in your examination of Mr. Finlay, and I have noted the fact that is was claimed that
10360 shipments were made at 13½ cents, and this statement purports to show that shipments were made at 13½ cents.

Q. You had no right to ship for 13½ cents under that tariff from St. Louis, had you?—A. I think we would have a right to bill shipments from—if that tariff applied from East St. Louis——

Q. But does it?—A. Well, I can't tell from that. I don't know whether that tariff covers the dates here.

Q. This tariff issued in 1896 reads from St. Louis to Alexandria, Louisiana, on business destined beyond that point.

Mr. ROSENTHAL. And that statement that you have in your hand covers what year?

Q. And remained in effect until May 8, 1906. Now, under that tariff would you have a right to ship for 13½ cents from St. Louis?—A. I do not find any shipments billed at 13½ cents in 1906.

Q. Do you in 1904? This tariff, mind you, was from 1896 to 1906.

Mr. ROSENTHAL. What paper are you examining with respect to the matter of shipments?

WITNESS. Petitioner's Exhibit 599, United States vs. Standard Oil Company.

Mr. ROSENTHAL. It is from an inspection of that that you are testifying to alleged shipments?

WITNESS. Yes; I find shipments listed here. You asked me about——

Q. 1904 and 1905.—A. I find shipments listed here in January, 1905, and in September and November, 1904, and some other
10361 shipments in and about that date, that this statement claims were charged 13½ cents to Alexandria.

Q. Do you know that it is a fact that you did make shipments for the Waters-Pierce Oil Company to Alexandria for 13½ cents a hundred from St. Louis?—A. No; I do not know it as an absolute fact.

Q. Well, have you investigated it and found out it is a fact?—A. I understand that there were some shipments that were billed in error at 13½ cents.

Q. In 1904?—A. I do not know what that date was; simply general hearsay information, and that the charge on those shipments was corrected as soon as it was called to the attention of the Oil Company.

Q. When was it called to the attention of the Oil Company?—A. I do not know.

Q. When was it called to the attention of the railroad company?—A. That I do not know.

Q. Isn't it a fact that it was called to the attention of yourself by Mr. Schindler that you had been shipping, in 1904 and 1905, for the 13½-cent rate?—A. That might have been so.

Q. When he was there investigating the facts in 1906?—A. That might have been so.

Q. Now, when he called that to your attention, did he call your attention to shipments made in 1904 and 1905?—A. I could not answer that question, because I do not remember the dates.

Q. After Mr. Schindler called it to your attention did you present bills to the Waters-Pierce Oil Company for the cent
10362 and a half a hundred?—A. Personally, I did not.

Q. Did your office?—A. No.

Q. Did any one in the Missouri Pacific road?—A. I understand that the auditor's office prepared those bills.

Q. The auditor's office of the Missouri Pacific road?—A. Yes, sir.

Q. And presented bills to the Waters-Pierce Oil Company?—A. That is my understanding.

Q. And they were paid?—A. That is also my understanding.

Q. Now, did those shipments include shipments in 1904 and 1905?—A. I could not answer that with any degree of certainty.

Q. Isn't that your recollection?—A. I presume, inasmuch as the shipments are tabulated on this sheet, that they are the ones that were referred to in that settlement and included in it.

Q. How could you bill by mistake at 13½ cents under a tariff of 15 cents?—A. You understand I did not bill these shipments to begin with.

Q. Certainly not, Mr. Stith.—A. But a bill clerk who knew that the cost of transfer or the pipe-line allowance at that time was a cent and a half a hundred simply deducted that, evidently, from the 15-cent rate and billed it out at the flat rate of 13½ cents. Clearly an error.

Mr. ROSENTHAL. How many of those were there?

WITNESS. Why, I do not think there were very many of them. I do not know just how many.

Q. Now, Mr. Stith, you also published during that same
10363 time from St. Louis and East St. Louis to Alexandria proper, a 25-cent a hundred rate, did you not?—A. The tariffs will show whether that is the fact or not.

Q. I show you defendants' Exhibit 593 and ask you if that is the case?—A. Well, personally, I evidently did not, because it is signed by the general freight agent.

Q. Well, I mean the Missouri Pacific Railway.—A. This tariff is evidence of what they published.

Q. What was it—a 25-cent rate?—A. It reads I. C. C. No. 6848 tariff I. S. 12336, applying on petroleum oil and its products, car-

loads, minimum weight 24,000 pounds, St. Louis, Missouri, and East St. Louis, Illinois, to Alexandria, Louisiana; rate, 25 cents per 100 pounds; effective August 17, 1904. It shows that it was filed with the Interstate Commerce Commission August 12, 1904. It is signed by J. C. Lincoln, general freight agent.

Q. You personally issued a like tariff in 1896, signed by W. C. Stith, general freight agent, didn't you?—A. Well, somebody issued it for me.

Q. In your office?—A. Over my name; yes, sir. Not exactly the same tariff, I beg pardon.

Q. Well, what is the difference?—A. This tariff does not apply from East St. Louis.

Q. Well, from St. Louis, then.—A. It applies from St. Louis; otherwise it seems to be the same.

Q. Then, from 1904 to 1906 you had a tariff from St. Louis and East St. Louis of 25 cents a hundred to Alexandria proper on
10364 oil?—A. There was a tariff, the I. C. C. 6848, just referred to, that was put in effect on August 27, 1904, but the record does not show that it was in effect up to 1906.

Q. How long was it in effect?—A. Till it was canceled.

Q. I show you the cancellation of it, and ask you when it was canceled? [Handing witness paper.]—A. This notice states that the tariff I. C. C. 6848 canceled, effective May 21, 1906. Notice issued May 8. Signed by A. T. Stewart, assistant general freight agent. Probably issued at my direction.

Q. Then, you did have a rate from 1904 to 1906 of 25 cents a hundred from St. Louis and East St. Louis to Alexandria proper?—A. That was the rate of the Iron Mountain road from August 17, 1904, to May 21, 1906, from St. Louis and East St. Louis to Alexandria.

Mr. ROSENTHAL. That rate was filed with the Commission?

WITNESS. Both the tariff and the cancellation notice were filed with the Commission, and they bear I. C. C. numbers.

Q. And from 1896 down to 1904 you had a tariff of 25 cents a hundred from St. Louis to Alexandria, had you not?—A. Let me see the documents a minute.

(Mr. Kellogg handed papers to the witness.)

WITNESS. I. C. C. 535, which carries the 25-cent rate from St. Louis to Alexandria, became effective July 16, 1896, and that was canceled by I. C. C. 6848, which applied from St. Louis and East St. Louis to Alexandria, Louisiana, and which became effective August 17, 1904, and continued in effect until its cancellation, May 21, 1906.

Q. So that from 1896 to 1904 you had a 25-cent rate (com-
10365 modity rate) from St. Louis to Alexandria proper, and from 1904 to 1906, the dates you name, a 25-cent rate from St. Louis and East St. Louis to Alexandria proper?—A. As these tariffs show.

Q. During that same time did the Missouri Pacific Railway not publish a rate, signed by you as general freight agent, to Alexandria and other places, of 30 cents per 100 pounds on oil, a commodity rate,

filed with the Interstate Commerce Commission. [Handing witness paper.]—A. This is a tariff of the Iron Mountain Railroad, I. C. C. 1744, which names rates from St. Louis, Missouri, and East St. Louis, Illinois, to Alexandria.

Q. How much per 100 pounds on oil?—A. Just wait a minute and I will tell you. On page 5 is shown a rate of 30 cents per hundred on oil, petroleum, carloads, to Shreveport, Monroe, Alexandria, and Boyce.

Q. Now, the date of that tariff, please?—A. August 10, 1897.

Q. 30 cents per hundred, did you say?—A. 30 cents per hundred.

Mr. ROSENTHAL. Was that filed?

Mr. KELLOGG. It was filed with the Interstate Commerce Commission.

WITNESS. It was filed with the Interstate Commerce Commission August 9, 1897.

Mr. ROSENTHAL. By whom was that tariff issued?

WITNESS. This seems to be the individual issue of the Iron Mountain Railroad, concurred in by connecting lines.

Q. It is signed by you, isn't it?—A. My name appears on here as general freight agent.

Q. Now, that tariff was made after this tariff of 25 cents,
10366 effective July 16, 1896, wasn't it?—A. Yes.

Q. And was a commodity tariff, wasn't it?—A. Yes; so far as this rate on petroleum oil is concerned.

Q. Yes, sir; that is what I mean.

Mr. ROSENTHAL. Has it any relation to the 25-cent tariff, purport to cancel it, or supersede it, or affect it in any way?

WITNESS. No.

Q. It was issued after the 25-cent rate, wasn't it?

Mr. ROSENTHAL. That already appears. That is conceded.

A. The dates show that it was, Mr. Kellogg.

Q. Now, do you pretend to say that a commodity tariff, issued after another commodity tariff, is superseded by the first one, that the first tariff remains in force and the other one has no effect?

Mr. ROSENTHAL. That is not what he said. They may both remain in force and effect. They may apply——

Q. Isn't it a fact that that tariff superseded the tariff of 25 cents issued in 1896?

Mr. ROSENTHAL. Do they apply to the same points?

Mr. KELLOGG. The same points.

Mr. ROSENTHAL. I think not.

WITNESS. No.

Mr. ROSENTHAL. I think not.

Mr. KELLOGG. St. Louis and Alexandria.

Mr. ROSENTHAL. One is limited to one point and the other covers a great many points. Isn't that the fact?

WITNESS. The tariff of August 10, 1897, states specifically what
tariffs it cancels and among that list is not included
10367 this specific commodity tariff.

Mr. KELLOGG. Certainly not.

Mr. ROSENTHAL. Which is the 1897 tariff—the 30-cent tariff?

WITNESS. That is the 30-cent or general tariff.

Mr. ROSENTHAL. Does that specifically state what tariff it cancels?

WITNESS. On the title page.

Mr. ROSENTHAL. Does it include the 25-cent tariff?

WITNESS. It does not.

Mr. ROSENTHAL. Does the tariff in which you find the 30-cent rate cover a great many points other than Alexandria, which is the point covered by the 25-cent tariff?

WITNESS. It covers Shreveport, Monroe, Alexandria, Boyce.

Mr. KELLOGG. Only four points.

WITNESS. But it applies from St. Louis; Kansas City; Omaha; Davenport; Memphis, Tennessee; Little Rock, Arkansas; Fort Smith, Arkansas; Chicago, Illinois; Cincinnati, Ohio; Milwaukee, Wisconsin; Dayton, Ohio; South Bend, Indiana; Detroit, Michigan; Cleveland, Ohio; Pittsburg, Pennsylvania; Louisville, Kentucky; Middleboro, Kentucky; Nashville, Tennessee; Macon, Georgia; Raleigh, North Carolina. In other words, the tariff was issued to cover the general movement of business from the territory, you might say, east of the Missouri River.

Mr. KELLOGG. Yes. As a matter of fact, Mr. Stith, the tariff on oil is simply from St. Louis and East St. Louis to four places, isn't it?

Mr. ROSENTHAL. In what tariff?

10368 Mr. KELLOGG. In that very tariff, and that is all.

WITNESS (after examining the tariff). The specific heading over the rate is St. Louis, East St. Louis, Carondelet, Cairo, Columbus, Belmont, Cape Girardeau, East Cape Girardeau, Kansas City, Leavenworth, Atchison, St. Joe, and in the column which is set aside to show the differential basis from these outside territories, outside of these so-called basing points, the statement is made that the rate will be the sum of the locals. That is the column there [pointing].

Q. Isn't it a fact that the column which you read gives a rate of 30 cents a hundred, among other places, from St. Louis to Shreveport, Monroe, Alexandria, and Boyce on oil?—A. I just read that.

Q. Then, that is a tariff of 30 cents per 100 pounds between St. Louis and East St. Louis and Alexandria, isn't it?

Mr. ROSENTHAL. Why, nobody has ever denied that.

A. That——

Q. Is it, or is it not?—A. It is not.

Q. Why?—A. Because this tariff specifically states the tariffs of the Missouri Pacific company which it cancels, and it does not include in that list the tariff which carries the specific 25-cent rate from St. Louis to Alexandria. It is intended that this 30-cent rate shall continue to apply from the other points that are named in this tariff.

Q. Is there anything on the face of that tariff that says it does not apply to Alexandria—one single word?—A. Not on that issue, but there is right here.

Q. Where is it on the face of it?—A. Right here.

10369 Q. Read it.

Mr. ROSENTHAL. Mr. Kellogg——

WITNESS. Missouri Pacific; it gives——

Mr. KELLOGG. Wait a minute. Let him answer the question. Read it.

Mr. ROSENTHAL. Well, you just wait a minute, will you? I suggest that in examining the witness that at least you do not occupy the same chair the witness occupies.

Mr. KELLOGG. I have got to look at the tariff. I can't stand off twenty feet and look at that tariff.

Mr. ROSENTHAL. If you do that, then don't talk quite so loud, because it is apt to disturb the witness.

WITNESS. It won't disturb me.

Mr. KELLOGG. I won't disturb Mr. Stith; he can talk. I have known him too long.

WITNESS. Now you watch what I am going to read, so I won't have to repeat it.

Mr. KELLOGG. Yes, sir; I am going to watch.

WITNESS. This tariff, immediately underneath the Missouri Pacific number, says it cancels No. 1938, I. C. C. numbers 4580, 4870, 5706, 5572, 5840, 6008, 6036, 6045, 6092-A, 6303, and in conflict tariffs 1604 and 2110. It does not include in that cancellation notice this tariff I. C. C. No. 535, I. S. 6145. As a consequence, this tariff 535 is the one that is in effect.

Q. So you had two tariffs in force, one of 30 cents and one of 25 cents, at the same time?—A. No, sir; not from St. Louis to Alexandria.

Q. Is there a word on the face of that tariff to show that that
10370 rate of 30 cents does not exist to Alexandria?—A. Yes, right here; the part I have just read.

Q. Well, does that state that a 25-cent rate will exist to Alexandria?—A. No; but this tariff does.

Q. In other words, anybody taking this tariff would have to go and hunt up and find whether there was another tariff?—A. Yes.

Mr. ROSENTHAL. In order to get the 18-cent rate between Whiting and St. Louis, you had to get four different documents.

Mr. KELLOGG. Now, you wait a minute.

Mr. ROSENTHAL. That is what we were fined twenty-nine million dollars for not doing.

Q. Have you not continued those tariffs—the Missouri Pacific tariffs—down to the present, showing a 30-cent rate from St. Louis and East St. Louis to Alexandria?—A. I could not say as to that.

Q. All right; let me show you.—A. It is within my knowledge, however, that the rate is now 30 cents from St. Louis to Alexandria.

Q. In other words, when Mr. Schindler went there and investigated it you pulled out the 15-cent rate and the 25-cent rate and made it 30 cents, didn't you?—A. The record shows for itself, Mr. Kellogg.

Q. I asked you if that was not after Mr. Schindler investigated it and called it to your attention.—A. No; I don't think so.

Q. Do you swear it was not?—A. I will not swear to that.

Q. When Mr. Schindler was there, was not the 25-cent rate and the 15-cent rate in force?

Mr. DURAND. Mr. Earle.

10371 Q. Well, Mr. Earle, then.—A. It might have been Mr. Earle. I had some talk with Mr. Earle about it.

Q. When Mr. Earle, of the Department of Commerce and Labor, was there investigating the matter, in 1906, both the 15-cent rate and the 25-cent rate were in existence, were they not?—A. I am inclined to think so.

Q. And they were immediately taken out by the railroad company?—A. They were taken out for the reason, as far as the 15-cent rate was concerned, that it was used only to a limited extent, and that it had outgrown its usefulness.

Q. Why was the 25-cent rate taken out?—A. Because the railroad thought it wise to cancel this kind of a tariff.

Q. And only have one tariff on the same products?—A. Yes.

Q. Why did the railroad think it was wise to cancel that kind of a tariff?—A. If they could get 5 cents more on their business, they wanted it.

Q. During all these years couldn't they have gotten it just as well before as after the investigation of the Bureau?—A. I don't think so.

Mr. ROSENTHAL. Evidently not.

WITNESS. The oil situation in Louisiana has very greatly changed in those years.

Q. How did it happen to change just at the time of this investigation?

Mr. ROSENTHAL. I object to that. There isn't any evidence that it just happened to change at the time of this

10372 investigation.

Q. Did you in 1899 issue another tariff showing a 30-cent rate from St. Louis?—A. This is a tariff No. C-21862, Missouri Pacific No. 3361, effective as to reductions February 7; as to advances, February 15, 1899, and applies from St. Louis and the other points named on the title page to Shreveport, Monroe, Alexandria, Boyce, and Minden.

Q. What was the rate named?—A. On what—on oil?

Q. On oil.—A. Thirty cents.

Q. When was the next tariff made?—A. This tariff is No. C-26162, Missouri Pacific No. 3963, and cancels 3361, the one I just had. It is effective October 15, 1900, and applies from St. Louis, Kansas City, etc., to Shreveport, Monroe, Alexandria, Boyce, and Minden.

Q. What rate?—A. And shows on page 5 as applying from St. Louis, Kansas City, Missouri, etc., to the four points mentioned—Shreveport, Alexandria, Monroe, and Boyce—a rate of 30 cents per 100 pounds.

Q. What was the next tariff issued?—A. This is I. C. C. No. —. I don't know what these marks on here are, Mr. Durand. Is that a correction of the I. C. C. number?

Mr. DURAND. I suppose it is.

WITNESS. Well, this is Missouri Pacific No. 4412, and cancels No. 3963 just referred to. It is effective June 16, 1902, and provides rates from St. Louis, Carondelet, Kansas City, etc., to Shreveport, Monroe, West Monroe, Alexandria, and Boyce; and on page 4
10373 provides a rate of 30 cents per hundred from St. Louis, Kansas City, etc., to the five points named, subject to note 6. Now let me see what that note is. Note 6 is simply a description of the kinds of oil—what go to make up petroleum oil. I am sorry that question came up there.

Q. Now, what was the next tariff issued?—A. The next tariff is I. C. C. 5336, Missouri Pacific No. 4807, effective July 1, 1903, and provides rates from St. Louis, Carondelet, Kansas City, etc., to Shreveport, Monroe, West Monroe, Alexandria, and Boyce; and on page 5 shows a rate of 30 cents per hundred from St. Louis, Kansas City, etc., to the five Louisiana points mentioned, subject to note 5, which describes the commodities which are included in the petroleum-oil rates as petroleum oil and its products.

Q. And this tariff was in effect until 1905, wasn't it?—A. I do not know.

Q. That last tariff applied from Bixby, Illinois, didn't it?—A. Yes.

Q. Now, Bixby, Illinois, is about 17 miles below St. Louis, isn't it?—A. I do not know whether it is 17 miles, but it is immediately opposite Carondelet.

Q. Well, near St. Louis?—A. It is on the opposite side of the river.

Q. So that 30-cent rate applied from Bixby to Shreveport, Alexandria, Monroe, and Boyce?—A. I am not sure about that.

Q. Well, look and see.—A. So far as this one tariff itself is concerned, it would indicate that that was the rate. There may have been some other record that would conflict with this.

10374 Q. I think not; I think that is the rate. Now, when was the next tariff effective?—A. This is a tariff of the Louisiana freight committee.

Q. The Missouri Pacific was a party to that tariff?—A. To which the St. Louis, Iron Mountain & Southern was a party.

Q. And was effective when?—A. Effective October 25, 1905.

Q. That tariff named a 30-cent rate, too, did it, and made it applicable from Bixby also?—A. This tariff shows on page 27 as applying from St. Louis and Kansas City territories, which would include Bixby, a 30-cent rate on petroleum and its products, to Shreveport, Alexandria, Monroe, and a number of other Louisiana points.

Q. Now, during that time was that 25-cent rate which you named applicable to Bixby?—A. Any rate that was applicable from St. Louis, under the general description of the territory from which the St. Louis rate applied, would apply also from Bixby. In the territorial description Bixby is included in the St. Louis rate.

Q. Did you ship a good deal of oil for the Waters-Pierce Oil Company from Bixby to these places named there, or to Alexandria, at 25 cents a hundred?—A. I do not know.

Q. I show you petitioner's Exhibit 605. Is that a waybill of the St. Louis, Iron Mountain & Southern Railway, showing a shipment of a carload of oil from Bixby, Illinois, to Alexandria, Louisiana, for 25 cents a hundred?—A. This purports to be apparently the
10375 original waybill covering the movement of U. T. L. car No. 9114, from Bixby, Illinois, to Alexandria, Louisiana, April 24, 1906, and is billed at a rate of 25 cents per hundred.

Q. Now, didn't you make a good many shipments at that rate for the Waters-Pierce Oil Company?—A. The record would show. I did not keep track of the waybills.

Q. I show you a list of U. T. L. cars.

Mr. ROSENTHAL. That is made up by the Government, isn't it?

Mr. KELLOGG. It was put in evidence; taken from the records of the Missouri Pacific Railway, showing the number of cars shipped during 1904 and 1905.

Q. I ask you if it is a fact that you shipped those cars from Bixby for the Waters-Pierce Oil Company, at 25 cents a hundred pounds, to Alexandria.—A. I could not say from this statement.

Q. Now, during that same time, haven't you looked into the subject at all to find out whether you did ship from Bixby to Alexandria at 25 cents for the Waters-Pierce Oil Company.—A. You show me the original waybills for this and I will tell you whether the business moved.

Q. Didn't you investigate to find out whether you did move a considerable business?—A. Some move, yes, sir; but I could not tell you whether it was these shipments, offhand.

Q. But there was some moved at 25 cents a hundred?—A. Undoubtedly.

Q. And all of the oil that you carried for the Waters-Pierce Oil Company during those years from Bixby was at 25 cents a hundred, wasn't it?—A. Well, I could not say as to that.

10376 Q. Do you have any recollection of ever charging any more?—A. I didn't do the billing, Mr. Kellogg.

Q. No; but you investigated it.—A. Neither did I collect the freight rates; but my recollection of the investigation that I did make is that it showed that they were charged, I believe with one or two exceptions, at the 25-cent rate.

Q. And those one or two exceptions were corrected afterwards, weren't they?—A. That I don't know. I think one of them was, at any rate.

Q. Now, during that same time you charged the independent oil companies 30 cents, didn't you?—A. I didn't charge anybody anything.

Q. The Missouri Pacific Railway, then? I show you a waybill—A. This is original waybill 1357 C. N., dated February 25, 1906, Bixby to Alexandria, car containing 65 barrels of L. oil (lubricat-

ing oil, I presume), consigned to the Bonner Oil Company, and is billed at 30 cents a hundred. I have gotten the waybill and the car number mixed there. The waybill number is 494, and the car number is 1357 C. N. I am surprised the gentleman did not put in a claim for it.

Q. Now, didn't you charge all the independents for every carload of oil that you shipped over the Missouri Pacific road from Bixby, Illinois, to Alexandria and those towns 30 cents instead of 25 cents?—A. Well, it does not appear that there ever was another carload excepting this one in question.

Q. It does appear there were six other carloads in 1905.

Mr. MARTYN. And one of them went at 25 cents.

Mr. KELLOGG. Yes; one of them went at 25 cents.

Mr. ROSENTHAL. Well, you have answered your own ques-
10377 tion, haven't you, by your own exhibit?

Q. I ask you if you did not ship car number 78461, B. & O. car, 94839, 87726, and C. N. car 1357 for the Bonner Oil Company during the years 1905 and 1906, and charge them 30 cents a hundred for it?—A. I do not know.

Q. And October 8, 1904——

Mr. ROSENTHAL. Don't forget the 25-cent shipment.

Q. B. & O. car to John M. Lance, and charge 30 cents a hundred for it?—A. I don't know.

Q. Now that 15-cent a hundred rate you say was a distance of how many miles—696 miles from St. Louis to Alexandria?—A. I believe the distance is 696 miles.

Q. That is a rate of about 43/100 of a mill per ton a mile, isn't it, or 43/100 of a cent per ton a mile?—A. I haven't figured it.

Q. Figure it out, will you, please?—A. (After figuring.) It figures out a little over 43/100 of a cent per ton per mile.

Q. Do you call that a pretty low rate?—A. It would be considered a low rate; yes.

Mr. ROSENTHAL. What is the mileage between St. Louis and New Orleans?

WITNESS. I don't know what the exact mileage is, but I think it is a little more than that.

Mr. ROSENTHAL. About 200 miles, isn't it?

WITNESS. No; not by short line, Mr. Rosenthal.

Mr. ROSENTHAL. Well, the rate per ton per mile would be
lower via New Orleans than it would be via this route,
10378 wouldn't it, on an 18-cent rate from St. Louis to New
Orleans?

WITNESS. Well, it might be. Very closely approximate the rate per ton per mile here.

Q. Now, Mr. Stith, you knew of these rates from Alexandria to Opelousas, Lafayette, St. Martinville, New Iberia, Jeanerette, Franklin, Morgan City, Schriever, and Crowley, did you, on the Southern Pacific line?—A. I don't know whether I did or not, as to specific rates.

Q. By your correspondence you seem to have arranged for those rates.—A. I don't think so.

(The letters introduced in evidence at the morning session were sent for.)

Q. Now, will you tell me how it happened, while those rates were in force, you published rates from St. Louis and East St. Louis over the Iron Mountain road to those towns and no others at from 36 to 40 cents a hundred pounds?—A. I do not remember the circumstances regarding the publication of the rates to which you refer.

Q. I show you a tariff effective June 3, 1898, issued under your signature as general freight agent of the Missouri Pacific Railway, on page 19, of which occurs the following: "Rates on petroleum oil, carloads, from St. Louis, East St. Louis, Illinois, and common points, to Schriever, Morgan City, Franklin, Jeanerette, New Iberia, Lafayette, St. Martinville, Opelousas, and Crowley," naming rates of 36, 38, and 40 cents per 100 pounds to those towns.—A. This is Joint Tariff 16–A, applying from St. Louis, Carondelet, and East St. Louis to stations in Louisiana on the Southern Pacific Company and
10379 other lines, effective June 3, 1898, and on page 19 is published rates on petroleum oil from St. Louis, East St. Louis, and common points to certain Louisiana points, Schriever, Morgan City, Franklin, Jeanerette, New Iberia, Lafayette, St. Martinville, Opelousas, and Crowley, varying from 36 to 40 cents per hundred. I do not remember what caused the publication of those rates.

Q. Isn't it rather strange that you should publish through rates in connection with the Southern Pacific line from St. Louis and East St. Louis to the same towns, and no other towns, to which you had a proportional rate with the Southern Pacific, and the Southern Pacific's rate not being filed with the commission?—A. I do not think there is anything strange in that. This Tariff 16–A is a joint tariff issued by the Southern Freight Committee and applied not only over the line of the Iron Mountain, but over the Louisville & Nashville, Mobile & Ohio, and Illinois Central railroads, and I do not recall the circumstances under which those tariffs were issued.

Q. But those roads, none of them, would reach from St. Louis and East St. Louis to the points named, that I have read?—A. No; and neither would the Iron Mountain.

Q. But the Iron Mountain, in connection with the Southern Pacific, did reach those points?—A. So did all the others.

Q. Then, why didn't you publish rates to the other points in Louisiana?—A. I assume there was no commercial demand for them, and that is the reason they were not put in.

Q. Well, oil is sold in other towns in Louisiana besides those?—A. I presume so.

Q. Oil is shipped to a great many other places, isn't it?—
10380 A. Oil in carloads is not; no.

Q. Do you ship oil in carloads to no other places——A. I did not say that.

Q. Than to those towns I named?—A. There might be shipments of oil in carloads to any point which is large enough to take a carload as a commercial proposition.

Q. Certainly. Any town large enough to take a carload might receive a carload of oil.—A. Yes; that is possible.

Q. Then, why did you limit this tariff to the identical towns which had a lower secret rate over the Southern Pacific road?

Mr. ROSENTHAL. I shall have to object to that. There is not the slightest evidence, except your statement, that there was a secret rate; on the contrary, the evidence is that they were not secret rates, but open, published, public rates, open to everybody that wanted to use them.

Mr. KELLOGG. We will see about that. Please answer the question.

Mr. ROSENTHAL. You are under no obligation to answer that question upon the assumption that there was a secret rate, Mr. Smith. The question assumes that which is not the fact and concerning which there is no proof in this case, and in your answer you have the right to exclude the suggestion that there was any secret rate there.

Mr. KELLOGG. Please answer the question.

WITNESS. I prefer not to answer the question, on the advice of counsel.

Mr. KELLOGG. All right.

10381 Q. Now, were these rates from Alexandria to the towns I have named over the Southern Pacific road filed with the Interstate Commerce Commission?—A. I do not know.

Q. Did you ever inquire to find out?—A. I did not.

Q. Your company made a proportional tariff to points beyond Alexandria, didn't it?—A. Yes.

Q. By what tariff did you expect that freight to go?—A. As an officer of the Iron Mountain Company I had no interest in the transaction further than that which was covered by the Iron Mountain's tariff which was filed with the Interstate Commerce Commission.

Q. Is there anything to indicate that these tariffs were filed with the Interstate Commerce Commission?

Mr. ROSENTHAL. Which tariffs?

Q. From Alexandria.—A. These are tariffs of Morgan's Louisiana and Texas Railroad & Steamship Company.

Q. That is Southern Pacific, isn't it?—A. It says "Southern Pacific Sunset Route" as the trade-mark; local No. 2234, dated New Orleans, May 6, on oil, carloads, from Alexandria to Crowley; and No. 2550, dated New Orleans, October 9, applying from Alexandria to Opelousas and other points, including Schriever. There is no I. C. C. number on either one of these tariffs, nor is there anything to indicate that they were filed; but on tariff 2234, that appears to have been filed with the Louisiana commission.

Q. But not with the Interstate Commerce Commission? There is nothing to indicate that?—A. I have already answered that question.

10382 Q. About what time did they commence to put the I. C. C. numbers on tariffs filed with the Interstate Commerce Commission?—A. I don't remember the exact date.

Q. 1895, wasn't it?—A. It might have been.

Q. Well, it was about that, was it?—A. I don't recollect definitely.

Q. What is your best recollection?—A. It was about that time.

Q. Since that time it has been the custom to put I. C. C. numbers on the tariffs filed with the Interstate Commerce Commission, hasn't it?—A. I think so, but not all local tariffs.

Q. Not local tariffs that were not filed with the Commission, of course not.—A. Nor on local tariffs that were issued, applying on local business.

Q. Do you know of a local tariff filed with the Commission that did not have an I. C. C. number?—A. I think I could find you some.

Q. Name one.—A. I can not name them offhand. I do not carry them in my head.

Q. Just name one and produce it, that did not have an I. C. C. number on it.—A. Well, I think I could.

Mr. ROSENTHAL. Do you mean name one now and produce it now?

Q. Produce it at any time.

Mr. ROSENTHAL. I presume he would have it around his clothes.

Q. Let me see that correspondence. I notice that you wrote to Mr. Finlay on May 29th, 1894: "Your note of 21st I find upon my return to the city. I will have to canvass this matter a little with

10383 Mr. Sargent of the T. & P. road before I can advise you definitely in the matter." What did you mean by that?—A. Just what it said—to confer with Mr. Sargent about it.

Q. Did you confer with him about these rates from Alexandria on?—A. Not the Southern Pacific rates, no. I presume I conferred with Mr. Sargent regarding the rates to stations on the Texas & Pacific Railroad.

Q. Did you write him on the 28th of September, 1894: "Your note of the 18th is at hand. The establishment of through rates on oil to points on the So. Pac. and T. & P. roads in Louisiana will have to be a matter of conference between ourselves and the representatives of those lines?"—A. I might have done that.

Q. Was it a matter of conference between you and the representatives of those lines?—A. I am inclined to think so, if this letter says so. This is a long while ago, Mr. Kellogg.

Q. Then, if it was a matter of conference between you and the Southern Pacific, the establishment of those rates, you knew about them, didn't you?—A. I knew about the general subject.

Q. Did you know about the rates when they were established?—A. I don't think I did.

Q. Was the Missouri Pacific furnished with a copy of these tariffs?—A. That I don't know.

Q. You knew there had to be tariffs of some kind established to take the oil on your proportional tariff from Alexandria, didn't

you?—A. I knew that there had to be some tariff issued by the Southern Pacific from Alexandria.

Q. And the subject of your conference was to get them to issue a tariff, wasn't it?—A. No; I don't know that it was, to get them to issue a tariff, but to ascertain if they were going to
10384 issue a tariff.

Q. When you ascertained it you stated in your correspondence that you had put this in force, didn't you?—A. I think that is true. I am not sure about that. (Examining letters.) Do these letters run in the order of date, or how is that?

Q. I don't know.—A. From this correspondence I would infer that I did not confer with the Southern Pacific regarding the establishment of these rates. In my letter of July 12 to Mr. Finlay I ask him if he has "succeeded in obtaining the consent of the Southern Pacific to put in effect the same rates from our connection at Alexandria to points in Louisiana, as they make from New Orleans, and can you advise whether or not if we tender shipments to them at Alexandria they would receive same and pay our charges;" and he advises under date of July 13 that he had not at that time obtained the consent of the Southern Pacific Railway to put in effect the same rates from Alexandria as from New Orleans.

Q. Didn't you make it a condition of putting your rate in that such rate should be established?—A. I think likely that is true.

Q. Now, isn't it a fact, Mr. Stith, that when you found the Southern Pacific were going to put in rates from Alexandria to these places which, combined with your 15-cent rate, would give you a route to the number of places I have named, that you immediately put in this tariff showing a higher rate from St. Louis to those same places——A. Let me see that tariff a minute before I answer that question.

Q. And did it for the purpose of covering up your secret
10385 rate?—A. No. I will answer no to that.

Q. You did not?—A. I did not.

Q. For what reason did you put in that rate then?—A. This rate undoubtedly was put in at the behest of the other lines that are parties to this tariff. This rate did not go into effect apparently until—well, this tariff is 1898. I think possibly there may be some——

Q. There is a tariff preceding that.—A. Some preceding that that might carry the same rate, but there was no desire to cover up anything by the issuance of that tariff.

Q. Did you tell the other lines that you had a rate lower than this when you put this in?—A. I could not say as to that.

Q. Was it your intention to carry two rates, one published and the other unpublished?—A. We had a published rate. All the rates were published.

Q. Were the proportional rates beyond Alexandria to those towns published and filed with the Commission?—A. I am not responsible—

was not then responsible for the rates beyond Alexandria. The rate to Alexandria was published and filed in the usual way pursued by the railroad company at that time.

Q. But that was not a local rate to Alexandria?—A. It was a proportional rate to Alexandria.

Mr. ROSENTHAL. It was the only rate issued by the Iron Mountain.

WITNESS. Which was a proportional rate to Alexandria.

Q. Is it not a fact that during all the years from 1898 down to 1906 the Missouri Pacific had like rates to the one I show you,
10386 on oil, of from 36 to 40 cents a hundred pounds, from St. Louis and East St. Louis to these towns and to no others?—A. The tariffs carry the record.

Q. What is that?—A. The tariffs carry the record, and they speak for themselvs.

Q. Then let me see the tariff. Didn't you look them over to-day noon to see if that was true?—A. Yes; and I think that is true. I think that is true, but the tariffs will show. I am not in a position to answer you definitely as to the dates that are stated there without reference to the tariffs, because I did not try to impress them on my memory.

Q. Now, why would the other roads want these rates of from 36 to 40 cents a hundred when there was a lower rate over your line in connection with the Southern Pacific?—A. Well, they might have desired a rate, and might not have been satisfied to have handled on a proportional rate basis, as was the Iron Mountain.

Q. Do you believe that any freight man would desire a rate from 5 to 10 cents a hundred higher to the same places?—A. I am not in a position to answer for all of them.

Q. You have had some experience in freight matters, haven't you?—A. Yes.

Mr. ROSENTHAL. He would, if he thought he could get the traffic, wouldn't he?

Q. Would the other road get any business at any such rate?—A. Not much.

Q. No, I don't think they would.

Mr. ROSENTHAL. Why, you have shown this same road got 30 cents, 15 cents, and 25 cents.

10387 Mr. KELLOGG. They did not get it out of the Standard Oil.

Mr. ROSENTHAL. No, we were too smart for them.

Q. What were the rates from New Orleans to these distributing points that I have named prior to your making this tariff of 15 cents a hundred?—A. I don't know.

Q. You don't know whether they were published and filed with the Interstate Commerce Commission or not?—A. I do not.

Q. When you say, then, that this rate was made to equalize those rates, you don't know whether they were or not?—A. I don't know as a matter of absolute fact. I simply had the assurance of Mr. Finlay that the Southern Pacific had established the same rates from Alexandria as from New Orleans.

Redirect examination by Mr. ROSENTHAL:

Mr. ROSENTHAL. Now, give me that alleged secret tariff, will you, please?

Mr. KELLOGG. Yes, sir. [Handing paper to Mr. Rosenthal.]

Q. At the bottom of this alleged secret tariff government counsel has been talking about here all the afternoon I find the two words "La. Com." What does that stand for?—A. I take it that that refers to an authority, the Louisiana commission.

Q. What is the Louisiana commission—the railroad and warehouse commission of the State of Louisiana?—A. It is a railroad commission. It exercises the same functions that railroad commissions do in other States over the transportation of the State.

10388 Q. That is, it is to the State of Louisiana, painting it broadly, what the Interstate Commerce Commission is to the United States?—A. That is substantially so.

Q. And the printing of those words "La. Com." upon this alleged secret tariff shows that it was issued with the authority——A. I should understand so.

Q. ——and cognizance of the Louisiana State commission?—A. I think this language here, "Authority No. 4404, Louisiana commission," means that that is the authority number of the Louisiana commission to publish those rates.

Q. Yes.—A. And in Louisiana you have to get the authority of the commission before you can publish a rate.

Q. I see. So that there can be no state rates issued in the State of Louisiana without the authority of the commission?—A. Those that were in effect at the time that the commission came in were approved by the commission as they stood. Those that have been issued since have been issued on their specific authority.

Q. Now, I call your attention to one of the 15-cent tariffs, being No. 5240. That was filed with the Interstate Commerce Commission on December 1, 1894. Does not this 15-cent rate that was filed with the Interstate Commerce Commission on December 1, 1894, specifically call attention to the fact that it is a rate issued in connection with local tariffs of the Southern Pacific road on points beyond Alexandria—right upon the face of the tariff, in print just as big as practically everything else upon the face of the tariff?—A. The language of the tariff is as follows: "The above rate applies only

10389 on shipments destined to points in Louisiana on the Southern Pacific Company, except stations on the joint track between Alexandria and Cheneyville."

Q. Every tariff, as I understand you, that the Iron Mountain road, of which you were general freight agent—every petroleum tariff that was issued, both the 15-cent rate, the 25-cent rate, and the 30-cent rate, were all filed with the Interstate Commerce Commission, were they not?—A. These tariffs, carrying these three rates were; yes.

Q. As I understand you, the 30-cent rate, concerning which you have testified, covers a great many points other than Alexandria, does it not?—A. Yes, sir.

Q. And covers freight moving from a great many points other than St. Louis, does it not?—A. Yes, sir.

Q. Whereas the 25-cent rate is a rate that is a single commodity tariff, limited to freight moving from St. Louis to Alexandria? That is the fact, is it not?—A. Yes, until it was made effective, I believe, from East St. Louis later on.

Q. I would like to have you point out, as clearly and simply as you can, for the benefit of this record, the difference between the 25-cent tariff and the 30-cent tariff [handing witness papers].—A. This tariff, I. C. C. 535, applies on petroleum oil from St. Louis to Alexandria 25 cents per hundred, effective July 16, 1896. It is a single sheet tariff, carrying a single commodity at a single rate. This tariff, 3361, effective February 7–15, 1899, is a general tariff, applying from all of the points in the territory known as Missouri River territory and east clear to the seaboard line, and includes all classes and commodities. It is general in its character, while the I. C. C. 535 is very specific, confining itself as it does to only one commodity, and from and to only one point.

10390 Q. Well, you are a railroad man of a great many years' experience.

Mr. KELLOGG. 30 years, I suppose.

Q. Have you ever known of the same road having two or more different tariffs, making different rates between the same points, that were in existence at the same time?—A. That has come within my notice; yes, sir.

Q. Now, the 25-cent tariff was a rate from St. Alexandria proper, was it not?—A. Yes.

Q. That is to say, on oil that was shipped from St. Louis to Alexandria and stopped there——A. Delivered.

Q. ——the rate was 25 cents?—A. And delivered at Alexandria; yes, sir.

Q. But on oil that went to points beyond Alexandria on the Southern Pacific road, then the 15-cent rate, as shown by the 15-cent tariff, applied?—A. Yes, sir; to the points that are specified—when the destination was one of the points specifically described in the tariff.

Q. About when was it that the Texas field was opened?—A. I do not think I can give you that information accurately, but it was, it seems to me, early in 1900—that is, after 1900.

Q. It was sometime before 1906, wasn't it?—A. Yes.

Q. And from the time the Texas field opened, as I understand, the Waters-Pierce Oil Company obtained practically all of its petroleum supply from Texas, for Louisiana points?—A. My understanding is that they obtained a very substantial portion of it from the Texas and Louisiana fields.

10391 Q. And do you know whether after that time any petroleum moved from St. Louis to these Louisiana points in any quantities at all?—A. I do not think it moved in any considerable quantities, because of the kinds of oil that they could supply them-

selves with from these southern refineries, the supply was drawn from these refineries, and not shipped from the North.

Q. Will you tell us where Bixby is?—A. Bixby is south of East St. Louis, and immediately opposite the Ivory yards of the Iron Mountain road on the west side of the river. It is a transfer or billing station.

Q. How far south of St. Louis?—A. It is about 15 or 16 miles south of East St. Louis.

Q. On which side of the river?—A. On the Illinois side of the river.

Q. How much of a metropolis is it?—A. It is not much of a metropolis. It is simply a railroad transfer station. When it first came into life it only consisted of a couple of box cars in which to do the business of the road and house the employes.

Q. Did the clerks live and do business in these box cars?—A. They did for a while, until they got a temporary or wooden hotel built.

Q. How long ago was that?—A. This was soon after the purchase of the so-called "Valley Division," that is the Illinois line, by the Iron Mountain road.

Q. How long ago was that?—A. I think that was about 1902 or '3, somewhere along there—probably 1903.

Q. So that in 1904 they were living and doing business in box cars at Bixby, were they?—A. They might have had a little better
10392 facilities in 1904. They have not very much even now.

Q. What class of employes are there there, or were there in 1904—a very high class?—A. The class of employes that they had there when the station first opened was any kind that they could get that would stay. A good man would not stay. There were no accommodations for them. They had a great deal of trouble with their help.

Q. That is down in the Mississippi swamps and marshes, isn't it?—A. Well, it is over in the Illinois bottoms.

Q. I suppose that class of help sometimes in the handling of freight and the making up of statements, and the interpretation of tariffs, might make mistakes, might they not?—A. They did make endless mistakes. They were in hot water all the time regarding the Bixby billing and reports.

Q. Why was it, now, that this St. Louis-Alexandria traffic or some of it moved by way of Bixby? Will you explain that, please?—A. The line from St. Louis to Alexandria by way of Bixby involves first the river transfer over the railways company's own transfer boats, after the shipments get to Ivory yard, and from Bixby south to Thebes the line is what they call a "water-grade line." The engines they have over there can haul as many cars loaded as will hold together. The line from Thebes south is also a low-grade line. The Iron Mountain use the Cotton Belt tracks from the west bank of the river over to Delta, and then take up their low-grade line from there south; whereas, if the business was moved over the west side line of the Iron Mountain, they could handle the same train from St. Louis

10393 to De Soto, which is 42 miles, that they could handle down to the Ivory transfer, without breaking it up; but when they got to De Soto they would have to split it up into trains of not over 20 cars, in order to get over the hills. That limited train would have to be handled until they got as far south as Piedmont, when they could pick up their heavier trains again; and it was to save the cost of transportation that the Iron Mountain people were prompted to secure the Valley Division, and that is the reason why this business is routed from Bixby and Thebes, as against taking it over the west side line. I might say also that the disposition of the power of the company has a good deal to do with the routing of the freight as between the east and west divisions.

Q. Were there some shipments that moved via Bixby to Alexandria from St. Louis as well as East St. Louis?—A. There was a movement of the general business of the company through Bixby.

Q. From both St. Louis and East St. Louis?—A. From both St. Louis and East St. Louis. That is true of the movement of the traffic in both directions, that is southbound as well as northbound. They used the Bixby route to the extent that they can take care of transferring the business across the river.

Mr. ROSENTHAL. I offer in evidence tariff I. C. C. No. 1744 of the Missouri Pacific Railway Company and other railroads, effective August 10, 1897, being a tariff just received from Government counsel, and concerning which Government counsel have just interrogated the witness. I also offer in evidence the first pages, namely, the covers of tariffs I. C. C. No. 3586 of the Missouri Pacific Railway Company and other roads; I. C. C. No. 4288 of the Missouri Pacific

10394 Railway Company and other roads, and I. C. C. No. 5336 of the Misouri Pacific Railway Company and other roads, and ask that they be marked Defendants' Exhibit 190 A, B, C, and D.

(Papers so marked.)

Mr. KELLOGG. You do not mean that you want this whole tariff in?

Mr. ROSENTHAL. Yes, sir.

Mr. KELLOGG. As it is there?

Mr. ROSENTHAL. Yes.

Mr. KELLOGG. The entire tariff? What is the use of printing all that stuff?

Mr. ROSENTHAL. There may be some parts of it that we can eliminate.

Mr. KELLOGG. There are any number of pages here that you do not want.

Mr. ROSENTHAL. There may be some pages, when I come to examine it more carefully than I have had an opportunity.

Mr. KELLOGG. These particular tariffs can not be marked and put in. You can put in copies.

Mr. ROSENTHAL. I understand; but the stenographer can do as he has heretofore done—put a slip on.

Mr. KELLOGG. Yes. Now, what is the use of putting in any part of this tariff that does not apply to the subject?

Mr. ROSENTHAL. There will be no part of it that does not apply to the subject that we want to put in.

Mr. KELLOGG. Here are pages of stuff with telegrams stuck in here, and all sorts of things.

Mr. ROSENTHAL. I want to show the essential difference
10395 between the make-up of the alleged 30-cent tariff and the make-up of the 25-cent tariff, and I do not know whether I will be able to do that without putting in the whole tariff or not until I come to examine it more carefully.

Mr. KELLOGG. Why not examine it now and determine that; and why can't we stipulate that these original tariffs may be produced and used on any hearing of this case with the same force and effect as though they were made a part of the record and printed in it?

Mr. ROSENTHAL. The trouble about that is, we are apt to have so much of that, Mr. Kellogg, that we will all lose sight of it unless it is somewhere in the record, don't you see? I am exceedingly anxious to shorten this record as much as I can, and I think if I go through this tariff between now and to-morrow morning there may be considerable of it that in the printing I can eliminate, having the record indicate the number of pages that are eliminated.

Mr. KELLOGG. All right.

Mr. ROSENTHAL. As to the others, I offer the title-pages, as I have heretofore indicated.

Q. Mr. Stith, were the 15-cent or the 25-cent tariffs in any sense of the word secret tariffs?—A. No, sir; they were issued in the same way that tariffs, one-sheet tariffs of this kind, were issued at that time by the railroad company and filed with the Interstate Commerce Commission.

Q. The law, in other words, was complied with?—A. Was complied with.

Q. In that regard?—A. Yes, sir.

10396 Recross-examination by Mr. KELLOGG:

Q. Now, Mr. Stith, to what agents did you send that 15-cent tariff?—A. I don't know, Mr. Kellogg, but I presume——

Q. If you don't know, don't presume. State what you know.—A. Inasmuch as I did not mail them myself, I could not tell you.

Q. Did any independent oil company—did any oil company other than the Waters-Pierce—ever ship a carload of oil on that 15-cent rate?—A. I don't know.

Q. Now, you say Bixby was a small place in 1904, where the employes lived in a box car. Bixby is a junction with Eastern lines, isn't it?—A. No and yes.

Q. Well, which is it; no or yes?

Mr. ROSENTHAL. Both.

A. It is both. Bixby, as you might say, was an intermediate point between Thebes and the northern terminus of the Valley Division of the Iron Mountain road, where it connects with the Terminal Railroad Association of East St. Louis.

Q. How did you happen to be receiving oil from the Bonner Oil Company at Bixby? Over what line did you receive it?—A. I don't know where that came from, but it came from some connecting line. Bixby stands in the same relation to the Iron Mountain road as East St. Louis would to any of the other lines leading south. It really is the East St. Louis carload billing station.

Q. There is a large business done through that station, isn't there?—A. All through business. There is no merchan-
10397 dizing, no local business in the town of Bixby.

Q. No, I am not talking about local business. Now, carloads of oil coming through from the East would be very apt to go through Bixby, wouldn't they?—A. Yes.

Q. And you say the employes there are liable to make mistakes?—A. The class of employes that they had in the early organization of Bixby Station were temporary.

Q. How about 1905 and '6?—A. They have had trouble with them ever since they have had an organization there.

Q. Tell me how it happens that practically all the mistakes were made in billing the oil of others than the Waters-Pierce Company.

Mr. ROSENTHAL. There isn't any evidence of that.

WITNESS. I know that all of the mistakes were not made with reference to their business.

Q. Isn't it a fact that practically every carload of oil that you shipped into that southern country, to Alexandria or those other places, you quoted the independents the 30-cent rate and charged them the 30-cent rate?

Mr. ROSENTHAL. I object to that. There is not a word here tending to show that he ever quoted a rate to any human being other than the Waters-Pierce, or that it was asked for.

Q. Is not that a fact?—A. I do not recall quoting the rates. If inquiry had been made to me by anybody for a rate on oil, I should have quoted him these rates that are shown on these tariffs.

Q. How did it happen that your road charged 30 cents to the independents, then?—A. I have tried to explain that to you.
10398 Q. You think that was a mistake, do you?—A. I think it was a mistake, and if the shipper of that oil had made a claim for a refund to the 25-cent basis, it would have been refunded.

Q. Isn't it a fact that when the Department of Commerce and Labor went down there to investigate, and asked your office for a rate on oil, you told them it was 30 cents?—A. I don't know what they told them.

Q. And isn't it a fact that within two days after they discovered this 15-cent rate and this 25-cent rate, you took them out?—A. No; the rates as I stated before were canceled about the time that Mr. Earl was there.

Q. Yes, but after he was there.—A. Well, about the time that he was there.

Q. But it was after Mr. Earl discovered them that you canceled them, wasn't it?—A. It must have been, yes.

Q. Yes, of course it was. Now, you say that the 15-cent rate bears on its face the indication that there must have been a rate beyond that, because it is a proportional tariff?—A. I don't know whether I said just that or not.

Q. Well, in substance?—A. I said that the tariff showed that the rate only applied on shipments which were destined to points beyond Alexandria.

Q. Now, during all that time, your line, in connection with the Southern Pacific lines, the Morgan Louisiana, Texas & Pacific, or whatever you call them, had a rate of 30 cents—of 36, 38, and 40 cents to these same towns, didn't you?—A. I have already answered that question, Mr. Kellogg.

Q. You have answered that they did, haven't you?—
10399 A. I have answered you in accordance with what the tariffs showed; went over them in detail, I believe.

Q. It was in existence down to 1906, wasn't it?—A. That is my recollection of it.

Q. Well, then, this tariff would be just as much notice of that rate beyond there as it would of the 15-cent rate, wouldn't it?—A. I don't think so.

Q. You don't think so. You pointed out the difference between the 25-cent rate and the 30-cent rate on oil, and said that the 30-cent rate was from a large number of points or to a large number of points, I don't remember which. The 30-cent rate which you distinguished from the 25-cent rate reached only four points, did it, originally, and never more than five or six?—A. I think that is correct.

Q. And the 25-cent rate reached one of those points?—A. That is correct.

Q. The 30-cent rate was a commodity rate on oil, wasn't it?—A. Yes, sir.

Q. And the 25-cent rate was a commodity rate on oil?—A. Yes, sir.

Q. The 30-cent rate was made after the 25-cent rate, wasn't it?—A. The tariff is of later date than the one carrying the 25-cent rate. The tariff that carries the 30-cent rate, however, states on its face specifically the rates which it cancels, and it did not include the tariff which carried the 25-cent rate.

Mr. ROSENTHAL. I forgot to ask you about that.

Q. Now, do you say that it is a common thing for a railroad to have two commodity tariffs between the same points at the
10400 same time naming different rates?—A. You mean now?

Q. Yes, sir, now.—A. Today?

Q. Yes.—A. No; but it was a very common practice in the days that these tariffs were issued, for that state of affairs——

Q. During 1904, '5, and '6, was it a common practice?—A. Yes; there were many of them.

Q. What was the object of having two rates, one of them for one shipper and another for another?—A. No; not at all; and there was no object in it. It was more a matter of oversight than otherwise.

Q. Name another tariff on the Missouri Pacific road, on any commodity, where there were two commodity tariffs in force at the same time between the same points.—A. It is impossible for me to name them offhand.

Q. Do you know of one that ever existed on the Missouri Pacific road?—A. I have heard of them; yes.

Q. You have heard of them?—A. Yes.

Q. What were they?—A. I don't think I could name them now. I know that this state of affairs as to duplication of tariffs has existed, but I could not name you the——

Q. But the duplication was between class tariffs and commodity tariffs?—A. Not necessarily; between commodity tariffs.

Q. Can you name one?—A. I have just told you, a minute ago, that I could not, that I could not name them specifically.

Mr. KELLOGG. As a part of the cross-examination of Mr. Stith I offer in evidence the title-page and page 19 of the Joint Freight Tariff from which he testified, No. 16–A, effective June 3,
10401 1898. That page, with the title-page, covers everything. I have no objection to anything else going in, but they do not refer to that.

Mr. ROSENTHAL. You offer in evidence the title-page.

Mr. KELLOGG. And page 19.

(The title-page and page 19, so referred to, are marked "Petitioner's Exhibit 929.")

(An adjournment was then taken until Thursday, October 15, 1908, at 10.30 o'clock a. m.)

10402 ROOM 677, FEDERAL BUILDING, CHICAGO, ILL.,
Thursday, October 15, 1908, 10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present on behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison. On behalf of the defendants, Mr. Moritz Rosenthal, Mr. John S. Miller, Mr. Chauncey W. Martyn.

HENRY E. PIERPONT, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. ROSENTHAL:

Q. Your full name, please?—A. Henry E. Pierpont.

Q. Where do you live?—A. Chicago.

Q. What is your occupation?—A. General freight agent of the Chicago, Milwaukee & St. Paul Railway.

Q. Have been for how long?—A. Since January 1, 1907.

Q. And before that what was your occupation?—A. I was assistant general freight agent from January 1, 1896, until then.

Q. And before that?—A. Before that I was division freight and passenger agent at La Crosse, and also at Winona, Minnesota for three or four years.

Q. Before that, Mr. Pierpont?—A. I was agent for the
10403 Chicago, Milwaukee & St. Paul Railway at Kansas City; also a chief clerk of the general agent's office and the local freight office at Kansas City.

Q. For how many years?—A. From about 1888 until 1892, I think.

Q. How long have you been in the railroad business?—A. About 33 years.

Q. You have had a wide familiarity with freight tariffs and their uses?—A. I have; yes, sir.

Q. Have you ever been connected with any other railroad company than the St. Paul?—A. Yes, sir; I was with the Milwaukee, Lake Shore & Western, in the telegraph and station service, for several years before going to the Chicago, Milwaukee & St. Paul. The Milwaukee, Lake Shore & Western is now a part of the Chicago & Northwestern.

Q. When a tariff is spoken of as a local tariff, what is meant by that, Mr. Pierpont?—A. The generally accepted definition of a local tariff is between two points served by the railroad issuing it.

Q. And a local State tariff would be between two points by the road issuing, on that road, within the same State?—A. Within the State.

Q. Prior to the passage of the Hepburn bill, in August, 1906, what was the general practice in railroad circles with respect to the use of unfiled State tariffs in connection with through transportation?

Mr. KELLOGG. That is objected to as incompetent and immaterial.

10404 The EXAMINER. You may answer it.

A. It was not the practice at that time to file with the Interstate Commerce Commission any State tariff, that is, a tariff naming rates only between points within a State, unless in its application in some manner it was used on interstate traffic.

Q. What was the practice, so far as the use of unfiled local State tariffs was concerned in connection with a through rate if the sum of those locals was less than the through rate?

Mr. KELLOGG. Same objection.

A. It was the practice to apply the locals when lower than the through rate, even if the locals were made up of an interstate or a State tariff, where such combination was on a junction point.

Q. That is to say, the rate might be made up of a through interstate rate plus a local State rate, without the local State rate being filed with the Interstate Commerce Commission?

Mr. KELLOGG. Wait a minute. That is not what the witness said. He did not say anything about their being filed.

A. Yes; it could.

Mr. KELLOGG. Not whether it could. That is not what they have asked you; but whether it was the custom to use unfiled State rates on interstate business.

A. It was, in the making of through rates, where they were used on a combination of locals.

Q. Now, will you explain that a little more fully, just what you mean by that?—A. Why, I mean that in following the practice that was in vogue at that time, prior to 1906, if a combination
10405 of locals on a junction point named a less through rate than might be in effect in some through tariff, that it was the practice to give the shipper the benefit of that lower combination rate.

Q. Even though the local tariffs were not filed with the Interstate Commerce Commission?—A. Even though a part of the through rate, that is, one local or both locals, might be in a tariff that was not filed with the Interstate Commerce Commission.

Q. How long had that been a common practice? For many years prior to 1906?—A. Oh, yes; it had been the practice for a great number of years; I can't say how long.

Q. And was that a practice that was indulged in with respect to all shippers and all classes of commodities?—A. Yes, sir; it was simply the general practice.

Q. Now, as I understand you, it was not customary, during those years prior to the passage of the Hepburn bill, to file these State tariffs?—A. No, sir.

Q. Even though they were used in connection with interstate shipments?—A. It was not usual to file them; and the first change in that respect that I recall was about a month after the passage or the taking effect of the so-called Hepburn law.

Q. What was that change evidenced by, do you know?—A. That is, what brought it about?

Q. No; you say that the first change that you knew of took place about a month after the passage of the Hepburn act. Just what do you mean by that?—A. Why, as I recall it, we received a
10406 ruling from the Interstate Commerce Commission about a month after the passage—after the taking effect of the Hepburn law—requiring that State tariffs, when used in the handling of interstate business, be filed and given a regular I. C. C. number.

Q. And prior to that time you had not been doing it?—A. It was not the practice prior to that time.

Q. Since that ruling of the Interstate Commerce Commission has the practice changed in that regard?—A. It has become general, as I believe; it has with our company.

Q. Do you know where Whiting, Indiana, is?—A. I know about where it is; yes, sir.

Q. Is there a district in and around Chicago known as the Chicago switching district?—A. Yes, sir.

Q. Can you describe that generally, Mr. Pierpont?—A. No, I can not. I could not draw the lines of the Chicago switching district.

Q. I show you defendants' Exhibits 149 and 150, both of which contain maps. Will you please state whether the Chicago switching district that you have in mind agrees with or is the same as the Chicago switching district set out on those maps?—A. Well, as to the practice of the company that I represent, I can not say whether it is or not. I presume it is. In general outline I should say it was

the district that we considered, under our application, as the Chicago switching district, but I could not say for certain.

Q. That is substantially an accurate representation of what in railroad circles is known as the Chicago switching district, is
10407 it not?—A. I think it is, yes, sir. I don't know about the exact boundary lines.

Q. We are not concerned so much about that. Whiting is within that Chicago switching district?—A. Whiting is within the Chicago switching district as applied by our company.

Q. And Hammond, Indiana?—A. Hammond is also.

Q. And South Chicago?—A. And South Chicago.

Q. Hegewisch and Blue Island?—A. Hegewisch and Blue Island.

Q. And East Chicago?—A. Yes, sir; East Chicago—well, I am not sure about East Chicago, though I think so of late years.

Q. What has been the custom for many years, prior to 1906, with respect to the application of the Chicago rates to points within the Chicago switching district?—A. It was the practice on the part of our company to apply Chicago rates to and from points within the so-called Chicago switching district, except on certain commodities, and also with a minimum revenue, that is, a certain minimum rate; there were also some exceptions in territory to that practice.

Q. Wherever application sheets were issued, those exceptions were made to appear upon the application sheets, were they not?—A. They were provided for.

Q. Was that true in so far as the application of Chicago rates was concerned in connection with commodities generally, or was it limited to a few commodities?—A. It was the case with commodities generally, but there were certain commodities that were excepted. That is, those particular commodities were excepted as a rule by all lines.

10408 Q. Such as grain——A. Such as grain and live stock.

Q. And the Chicago rates were applied to these points in the switching district, as I understand, whether the points were within the State of Illinois or in the State of Indiana just across the line, as Whiting or Hammond?

Mr. KELLOGG. That is objected to. The tariffs are the best evidence of that.

Q. Is not that so?—A. It was the practice to consider Whiting or any of those points that were within the district as taking Chicago rates under the switching proposition.

Q. Mr. Pierpont, I show you a copy of Tariff 24, I. C. C. No. 3 of the Chicago & St. Louis Traffic Association, effective May 15, 1899, and also a copy of the Illinois Railroad and Warehouse Commissioners' Classification of January 1, 1900, both of which documents appear to have been filed with the Interstate Commerce Commission; also a copy of the Illinois Railroad and Warehouse Commissioners' Classification in force July 1, 1895, which appears to have been filed with the Interstate Commerce Commission; also a copy of petitioner's Exhibit 549, the same being the Chicago & Alton Railway Tariff

I. C. C. 981, effective August 13, 1901. I likewise show you a copy of petitioner's Exhibit 550, the same being Chicago & Alton Railway Company's Tariff I. C. C. No. 1203, effective June 19, 1903, both of these exhibits, 549 and 550, appearing to have been filed with the Interstate Commerce Commission; and I also call your attention to a copy of petitioner's Exhibit 551, the same being Chicago & Alton Railway Company's Tariff G. F. D. No. 10525, effective August
10409 15, 1903, the latter tariff appearing not to have been filed with the Interstate Commerce Commission until December 21, 1905. I also show you a copy of petitioner's Exhibits 552 and 533, the same being Chicago & Alton Railway Company's tariff entitled "Special G. F. D. Nos. A209 and A447," and effective, the first on January 1, 1903, the second January 1, 1904. I also call your attention, in connection with the same documents, to a tariff of the Chicago & Alton Railway Company, I. C. C. No. 1407, this purporting to have been filed with the Interstate Commerce Commission. Will you please look at those documents and tell me whether or not you have heretofore made a careful examination of them?—A. I have seen this tariff before, but I have not made any special study of it.

Q. You mean Tariff 24, I. C. C. No. 3?—A. That is a tariff that applies between Chicago, Milwaukee, and Watertown, and points taking the same rates, and East St. Louis and points taking the same rates shown in Group No. 1, governed by Illinois classifiication.

Q. Assume that the amendments do not affect the original tariff, because I think it is conceded that they do not.—A. There are a lot of them.

Q. Now, I ask you, Mr. Pierpont, to examine those documents and then tell me whether from those documents a rate for the transportation of petroleum oil in carload lots during the years 1903 and 1904, from Whiting over the Chicago Terminal Transfer Railroad to Chappell, Illinois, and from Chappell, Illinois, to East St. Louis, Illinois, over the Chicago & Alton Railroad, could have been quoted.

Mr. KELLOGG. I object to that. The tariffs are the best
10410 evidence.

Q. This question is not what the rate would be, but whether from those documents a rate could have been quoted?—A. I would answer yes.

Q. Very well. Now, with all of those documents before you, if you had been asked to quote a lawful rate between the points designated, during the years, say, 1903 and 1904, what rate would you have quoted?

Mr. KELLOGG. That is objected to as incompetent, calling for the conclusion of the witness, and the tariffs are the best evidence of what the rate was.

A. I should have quoted 6 cents a hundred.

Q. I direct your attention now to certain C. B. & Q. tariffs. I call your attention again to petitioner's Exhibit 558, being the Chicago & St. Louis Traffic Association Tariff No. 24 and to the classifications of the Illinois Railroad and Warehouse Commission, that I have in

the previous question called your attention to. I likewise call your attention to a copy of petitioner's Exhibit 570, the same being C. B. & Q. Tariff I. C. C. No. 4721, purporting to cancel I. C. C. No. 2965, effective December 28, 1903, being what is commonly known as an application sheet. I also call your attention to a copy of petitioner's Exhibit 571, the same being Amendment 3½ to C. B. & Q. Tariff I. C. C. 4721, effective May 1, 1904; and I direct your attention to the fact that this Amendment 3½ purports to give a list of numbers of various tariffs, including the Chicago & St. Louis Traffic Association I. C. C. No. 3. I call your attention also to a copy of the
10411 C. B. & Q. tariff bearing I. C. C. No. 4234, and Supplement No. 2 to the same tariff, which supplement appears to be effective by its terms February 8, 1904; and also to the fact that this tariff, C.B. & Q. I. C. C. No. 4234, is likewise noted on Amendment 3½ to C. B. & Q. I. C. C. 4721. I also call your attention to a copy of the C. B. & Q. tariff marked G. F. O. No. 1059, effective by its terms January 1, 1904; and I direct your attention to the fact that this G. F. O. No. 1059 is listed with other tariffs on Supplement No. 2, C. B. & Q. I. C. C. No. 4234, the same one that I have previously called your attention to, and filed with the Interstate Commerce Commission. I also call your attention in this same connection to C. B. & Q. Tariff G. F. O. 1247, effective January 10, 1896, and ask you in connection with this answer to assume that this was filed with the Interstate Commerce Commission April 4, 1904, proof of which we will hereafter make, and that upon the filing of this last document, April 4, 1904, it was given a number, 17209. I call your attention to the eighth page of this tariff, which shows a No. 288, and to the reference of that number, which refers for the rates from Chicago to East St. Louis to special tariffs. I understand the Government concedes of record that this last document that I have described, C. B. & Q. G. F. O. 1247, was filed with the Interstate Commerce Commission April 4, 1904. Having all those documents before you, in the year 1904, could you have quoted a rate from those documents on petroleum oil and its products in carload lots, from Whiting to East St. Louis, over the C. B. & Q.; and if so, what would you have quoted as the lawful rate, both before and after the finding with the Interstate Commerce Commission of Amendment 3½ to I. C. C.
10412 4721?

Mr. KELLOGG. That is objected to as incompetent, calling for the opinion of the witness, and asking the witness for a mere conclusion. The tariffs are the best evidence.

A. I could.

Q. What rate would you have quoted?—A. I should have quoted the 6-cent rate, the Chicago rate applying from Whiting.

By Mr. MARTYN:

Q. I show you a copy of Pennsylvania Railroad Company's tariff I. C. C., S. No. 459, effective April 10, 1904, and ask you to examine that tariff and state whether or not in the absence of a percentage

sheet you can quote a rate from that tariff, from Olean, New York, to Norwood, New York, via Rochester, on petroleum and its products in carloads.

Mr. KELLOGG. That is objected to as incompetent. The tariff is the best evidence.

A. I would quote a rate from this tariff, from Olean to Norwood—is that the point?

Q. Yes.—A. If routed via Rochester was not specified; but when you specify routing via Rochester, I could not quote a rate from here.

Q. What would you have to have to quote a rate, or to determine whether it makes a rate via Rochester?—A. It speaks of routing in accordance with agreed percentages.

Mr. KELLOGG. But he is asking you now about the face of that tariff, not about some other.

Q. No, I am asking you what you would have to ascertain.

10413 Mr. KELLOGG. No; that is not the question you asked him. You asked him if from that tariff he could quote a rate to Norwood, from the tariff itself.

A. I would have to have authority covering the agreed percentages, as referred to in this tariff.

Q. What would show that, in the ordinary course of railroad matters?—A. Why, in western roads we call them division sheets, but on eastern roads they call them percentage sheets, I believe.

Q. I show you defendants' Exhibits 114A and 114B, the same being or purporting to be percentage sheets, one between the Western New York & Pennsylvania Railroad and the Rome, Watertown & Ogdensburg Railroad Company and the Rome, Watertown & Ogdensburg division of the New York Central & Hudson River Railroad Company, and ask you to examine these documents and state whether or not the tariff first shown you, I. C. C. s. 459, does make a rate on petroleum and its products in carloads from Olean to Norwood via Rochester.

Mr. KELLOGG. Same objection.

Mr. ROSENTHAL. In connection with the last question I should like to have you have a map of that region before you.

[Map in Official Railway Guide placed before witness.]

A. No, not via Rochester.

Q. I also show you a copy of petitioner's Exhibit 608, the same being Pennsylvania Railroad Company Tariff G. F. D. 114, dated October 8, 1903; I also show you a copy of petitioner's Ex-

10414 hibit 612, the same being New York Central & Hudson River Railroad Company rate order No. W. K. 201, dated January 1, 1904; I also show you a copy of the Central Vermont Railroad interstate freight tariff No. Y5, effective January 11, 1893, and ask you to assume that all of these tariffs, prior or subsequent issues, naming the same rates were in effect in the year 1904. Could you at that time have named the cost of transportation from Olean, New York, via Rochester and Norwood, to Burlington, Vermont, on petroleum and its products in carloads?

Mr. KELLOGG. That is objected to as incompetent, calling for the conclusion of the witness, and the tariffs are the best evidence.

A. What is meant by "the cost of transportation?"

Mr. ROSENTHAL. Can you name a rate?

Q. The last tariff shown you is at $23 per car. So you can give a per car rate for that distance, if you please, in connection with the per hundred rate or barrel rate that may be shown in the other tariffs.—A. I am used to hearing "cost of transportation" questions from a different standpoint.

Mr. KELLOGG. I suppose you could name what each tariff shows, could you?

Mr. ROSENTHAL. Don't let us get mixed up on a long question like this by interjections. Add to that question and, if so, state what it would be.

A. The rate which I should quote from these tariffs is 9 cents per barrel from Olean to Rochester, based on the capacity of the tank, or in box cars 11 cents per barrel, of a minimum of 24,000 pounds.

From Rochester to Norwood, proportional, when destined to
10415 stations on the Rutland Railroad, 9 cents per hundred pounds in carloads; the minimum weight is not specified. The rate from Norwood to Burlington, Vermont, $23 per car, without reference to weight.

Q. If, in addition to the documents you have already examined in this connection, you had before you the tariff I now show you, Western New York & Pennsylvania Railroad Company's Tariff I. C. C. No. 161, naming rates between Olean and points on the Western New York & Pennsylvania Railway stations—and I call your attention to the fact that, among others, it shows a rate from Olean to Rochester, New York, 5th class, of 9 cents per hundred pounds—and the exceptions of the Pennsylvania Railroad to Official Classification I. C. C. No. 1977—and I call your attention to page 6, which has this language, "Petroleum and its products, as follows: Burning and lubricating oil, benzine, naphtha, residuum, paraffine, in tanks, cars, barrels, cases, or iron drums in carloads, when rating is not provided for in special freight tariffs, 5th class"—with those documents before you, would that change your answer as to the rates?

Mr. KELLOGG. Same objection.

A. No.

Q. I also show you Rutland Railroad Company Local Freight Tariff No. 1 in connection with the tariff previously shown you, naming a rate of $23 per car from Norwood to Burlington, and call your attention to the fact that the Local Freight Tariff No. 1 names a 33-cent per cwt. rate between Norwood and Burlington on articles

of the 5th class, and ask you to assume that it is shown upon
10416 the record that the exceptions to the Official Classification of the Rutland Railroad put oil in the 5th class—with documents showing such a class rate before you, would you have any other or different rate to quote than that previously stated?—A. No.

(A recess was here taken until 2 o'clock p. m., at which time the examination of the witness was proceeded with as follows:)

By Mr. ROSENTHAL:

Q. Mr. Pierpont, I show you Central Vermont Tariff I. C. C. No. A336, on petroleum oil and its products, from New London to Burlington, Vermont, naming a rate of 12 cents per 100 pounds between those two points, taking effect July 1, 1899; this tariff by reason of the I. C. C. number, purporting to have been filed with the Interstate Commerce Commission. In connection with that I show you petitioner's Exhibit 665, the same purporting to be what is known as a State rate on the Central Vermont Railway, making a rate from Burlington to Montpelier of $36 per car, under date of 1904. Assuming that the first tariff I. C. C. No. A336 continued in effect throughout the year 1904, and assuming that there was a through rate in addition to these tariffs, from New London to Montpelier, would you quote a rate of 12 cents per 100 pounds, New London to Burlington, and $36 per car Burlington to Montpelier, on these two tariffs?

Mr. KELLOGG. That is objected to on the same ground as the other question.

A. I would quote the combination of the two rates, pro-
10417 viding the shipment was routed via Windsor and Essex Junction; or rather was not routed contrary to those junction points, as named in the tariff from New London to Burlington.

Q. Those being the junction points named on the tariff?—A. The 12-cent rate is based on the route via Windsor and Essex Junction.

Q. That is to say, you would take the interstate rate from New London to Burlington, which was filed, together with the State rate from Burlington to Montpelier, which was unfiled, and make a rate from the combination of those two tariffs?—A. I would.

Q. Now, would you regard it as proper railroad practice in the shipment of a car of petroleum under those tariffs, if you please, or under a through tariff, from New London to some point in Vermont intermediate between New London and Burlington, to drop the car off at that intermediate point instead of sending it to Burlington and back to that intermediate point, provided the shipper paid the same rate as though the car had been sent clear through to Burlington and brought back?

Mr. KELLOGG. Same objection.

A. In our territory we would have done that; that is, if it lessened the service and did not change the rate, if that was the effect.

Cross-examination by Mr. KELLOGG:

Q. That is, you would use that State rate, not filed with the Commission, provided the shipments were routed via Windsor and Essex Junction?—A. That is, if the shipper did not route it
10418 contrary to the provisions of this tariff.

Q. The provisions of that tariff require the route——A. Via Windsor and Essex Junction.

Q. So you would not consider that those local State rates not filed with the Commission were an authority for the shipment, unless the car was routed by that route?—A. Oh, no; I am speaking about the 12-cent rate. I would not consider that this 12-cent rate was proper from New London to Burlington if the shipper had directed routing other than as provided for on the tariff, by Windsor and Essex Junction.

Q. If there were any shipments that were routed another way, that would not be the authority for them?—A. It would depend entirely on who was responsible for the route followed.

Q. What do you mean, then, that you consider that an authority for the shipment if routed by that junction?—A. If the shipper did not route against this junction.

Q. If he did, it would not be an authority, would it?—A. That is, this would not be proper authority for the 12-cent rate from New London to Burlington, if the shipper routed contrary to the provisions of the tariff on its face. That would be as we would understand it.

Q. In other words, the goods must be routed from New London to Burlington via Essex Junction and Windsor——A. Windsor and Essex Junction.

Q. Windsor and Essex Junction, in order to be shipped according to that tariff?—A. If the shipper was to turn over the
10419 car to the transportation company at New London, simply billing it to Burlington, it was the business of the Central Vermont Railroad Company then to forward via this route. If the shipper directed the movement from New London to Burlington via some other route, this tariff, as I understand it, would not apply.

Q. That is what I understand. Now, in answering that question you understand that Tariff No. 660I, the local State tariff, was not filed with the Interstate Commerce Commission, don't you?—A. Yes, sir; and my answer was with reference to this interstate rate.

Q. In answering Mr. Rosenthal's question for shipments to Bethel and Montpelier you used the rate not filed with the Commission, 660I?—A. Yes; in connection with the 12-cent rate, if properly applied, as I described it on this interstate tariff, which, I should understand, would be properly used, following the practice where I am familiar with it, as against the through rate which might have been in effect at some other figure.

Q. Now, suppose the Interstate Commerce Commission were asked for a rate from New London to Montpelier and Bethel, what rate could they quote?

Mr. ROSENTHAL. The Interstate Commerce Commission do not quote rates, do they?—A. I don't know.

Q. What?—A. I don't know what rate the Interstate Commerce Commission could quote.

Q. What rate could they cite to shippers? Suppose the shipper should ask the Interstate Commerce Commission what the
10420 rates were from New London to Bethel and Montpelier.—A. I don't know.

Q. They could not quote the rate you have just mentioned, could they?—A. I don't know why they could not. Do you mean at the present time?

Q. No, no; at that time. At the time these shipments were made, with that 660I tariff, that local tariff not being on file with the Interstate Commerce Commission, they could not very well quote it, could they?—A. If they did not have the rate, they could not quote it possibly, but I do not know as they are called on for rates very often.

Q. Why, isn't it a fact that they are frequently asked to state what the rates are between certain points?—A. Oh, yes, at the present time.

Q. Yes; and always have been.

Mr. ROSENTHAL. Oh, no.

A. Not very frequently, so far as I know; but suppose they have been requested to quote rates.

Q. What is the object of filing them with the Commission?

Mr. ROSENTHAL. That is what we have been trying to find out for three years.

A. Interstate rates?

Q. Yes, certainly.—A. Because there is a requirement, that interstate rates shall be filed with the Commission.

Q. Yes; but why are they required to be filed there?—A. Because it is a requirement of law.

Q. And that is all the reason you can give, simply because the law requires it?—A. The law requires the filing of certain interstate rates or tariffs with the Commission.

10421 Q. In order to give them publicity, isn't it, to show what the rates are?—A. It provides that rates between two points that are interstate should be filed with the Commission.

Q. I say, what was the object of that?

Mr. ROSENTHAL. Do you want a lay witness to interpret the object of the law that judges are guessing about now?

Mr. KELLOGG. He has been testifying about the law.

Q. Now, Mr. Pierpont, you say that since 1906 it has been customary to file local State rates with the Interstate Commerce Commission.—A. There was an order issued by the Interstate Commerce Commission, about the first of September as I remember it, which required that.

Q. Mr. Pierpont, I show you a compilation of rules and requirements of the Commission, published by the Interstate Commerce Commission, containing the following order made on February 13, 1888: "Interstate Commerce Commission, Auditor's Office, Washington, February 13, 1888. Roads located wholly in one State or Territory which interchange freight or passenger traffic with connections to or from points outside of such State or Territory, on through tickets or bills of lading, should file tariffs covering such traffic with the Commission. If such through rates are made by the addition of local rates to the rates of connecting roads, such local tariff should be

filed with the Commission, together with a statement that through interstate rates are made by adding such local rates to the rates of the carrier (naming it) with which connection is made. If joint
rates are made on any basis other than by the addition of the
10422 local rates to the through rates of connecting carriers, tariffs
showing such rates should be filed with the Commission, covering all interstate business transacted thereunder. For the Commission, C. C. McCain, auditor." Are you familiar with that rule?—A. No, sir.

Q. Never heard of that before, I suppose?—A. I don't think I ever did. You were going to show me, you said. You have not done so.

Q. That was published. I show it to you right there [handing witness pamphlet].

Mr. ROSENTHAL. I call your attention to the fact that that has to do with shipments on through bills of lading.

Mr. KELLOGG. I am coming to that.

(Witness examines the pamphlet handed him by Mr. Kellogg.)

Q. Well, did you ever hear of that?—A. I don't remember ever seeing it or hearing of it.

Q. You never heard of it. The Commission seem to have provided here in 1888 that shipments on through bills of lading, by railroads entirely within the State, should file their tariffs covering such traffic with the Commission, doesn't it?—A. The auditor seems to have issued something of that sort.

Q. Well, that is for the Commission?—A. I don't know——

Q. The last rule was made and signed by the secretary or auditor, wasn't it? They are always signed that way.—A. I am not sure about that. I don't know.

Q. The very last rule you spoke of was signed by the secretary. It was not signed by the Commission.—A. I don't doubt that it was signed by the secretary.

10423 Q. At that time the auditor issued it for the Commission, didn't he? It says, "For the Commission, C. C. McCain, auditor."—A. I am not a lawyer. I don't know whether the auditor has the same authority as the secretary or not.

Q. Did you understand that it was different authority?—A. No; I don't understand anything about it. As I have told you, I didn't know that there was such an order in effect, and so far as I know it has not been complied with, during the years that I have been connected with the traffic end. That was issued prior to that time.

Mr. ROSENTHAL. Was it referred to in that 1906 order?

WITNESS. No; I want to say that the order that I did see, issued in 1906, soon after the going into effect of the Hepburn law, made no mention whatever of any previous order. It indicated that it was a new condition, and it was looked upon as a new condition.

Q. Were you so advised by your counsel?—A. I don't know whether I ever spoke to our counsel regarding that feature.

Q. Isn't it a fact that in 1899 the Interstate Commerce Commission in a case——

Mr. ROSENTHAL. Recognized that they did not file them.

Q. In a case in which the Chicago, Milwaukee & St. Paul Railway was a party, held that rates used as a part of a through shipment, an interstate shipment, must be filed with the Commission, in 1899?—A. What case is that?

Mr. ROSENTHAL. Wait a minute. Read the last paragraph.

Mr. KELLOGG. I will read the whole last clause.

10424 Mr. ROSENTHAL. Let him read the last page of that decision.

Mr. KELLOGG. I will read the whole last page of it myself.

Mr. ROSENTHAL. Well, that is more than you did the other day. You only read the last sentence.

Q. "It is found in this case that various carriers engaged in the carriage of corn at combination rates from Illinois points to the seaboard had not filed with the Commission the local rates in Illinois, which they apply on that traffic in connection with through rates from Chicago or other market cities in Illinois, and special request had to be made by the Commission for such rates before we could determine what rates were actually in effect from such originating points in Illinois to the seaboard. A similar practice of not filing State rates with the Commission is followed by carriers in other parts of the country."

Mr. ROSENTHAL. Mark that.

Q. "When rates established to apply between points within a single State are applied as a part of combination rates on transportation through different States, such State rates, as well as the interstate rates with which they are combined, must be published at stations and filed with the Commission, as provided in section 6 of the act to regulate commerce." And the Chicago, Milwaukee & St. Paul Railway was a party to that decision. That was in 1899.—A. It seems to confirm absolutely what I said as to the——

Q. Well, but that was ten years ago, wasn't it?—A. I know it.

10425 Q. And you say it was the practice up to 1906?

Mr. ROSENTHAL. That did not seem to change the practice.

A. That is what I say now, that until the order issued about a month after the going into effect of the Hepburn law.—I can't state the date; it seems to me it was along about the first of September, 1906—it was not the practice to file in Washington with an I. C. C. number, all State tariffs, even when such State tariffs were at times used in the making of an interstate rate on a through shipment.

Q. Then, your idea is that the railroads violated the order of 1888 and violated that decision of 1899, and continued to violate the law until after the Hepburn Act was passed, is it?—A. I don't know anything about violating the law.

Q. Is not that as plain as the order you read?—A. No; I am not interpreting the law.

Mr. ROSENTHAL. Go ahead, Mr. Pierpont, and finish your answer.

A. I am not interpreting the law. I simply say that the statement

that you read indicates that up to 1899, and after 1888—that is, from 1888 to 1899, the condition was known, just as I stated.

Q. Certainly.—A. There was no order issued after that that I heard of or know of until the order of 1906, which I state came out as an absolutely new order, gave no reference to the previous requirements, and I understood it was the first order of the kind.

Q. Is not that decision——. A. I don't know anything about this decision.

10426 Q. About as plain as anything can be?—A. What is it—decision of what?

Q. The Interstate Commerce Commission.

Mr. ROSENTHAL. I don't suppose you pretend to be lawyer enough to interpret that decision.

Mr. KELLOGG. He has been interpreting that order.

A. Let me see the order, will you, please. As far as I know about it—I don't know anything about that law, or the interpretation of your law, but I advised you that it was not the practice, as I understood it, to file State tariffs with the Interstate Commerce Commission until that last order.

Q. In what respect did the Hepburn bill change the law as to filing tariffs?—A. You will have to ask some lawyer about that.

Q. It did not change it a particle, did it, as to railroads, as to filing tariffs?—A. I can't answer that. I know very little about the law.

Mr. ROSENTHAL. He has not testified to the law. He has simply testified to a rule of the Commission, and railroad practices.

Q. Now, you say it was the practice of the railroads to use local State rates that were not filed with the Interstate Commerce Commission for through interstate shipments, do you?—A. I say that was the practice.

Q. Was that the practice of the Chicago, Milwaukee & St. Paul Railway?—A. It was.

Q. Up to 1906, was it?—A. Yes; some time in 1906.

10427 Q. Now please name a local State rate, not filed with the Interstate Commerce Commission, that was used by the Chicago, Milwaukee & St. Paul Railway for an interstate shipment on goods consigned through from one State into another.—A. Name a rate?

Q. Yes, name one.—A. Why, I can't recall rates on any particular movement.

Q. How do you know what the practice was, unless you can name them?—A. Because I was actively engaged in the handling of business.

Q. Give us one tariff in any part of the country that the Chicago, Milwaukee & St. Paul Railway used which was not filed with the Interstate Commerce Commission as a combination on an interstate shipment.—A. There were a great many of them, but I can not name them all.

Q. Name one of them. One will satisfy me for the present.—A. Our company have in effect, I think, 12,800 tariffs to-day.

Q. Now, one of them will satisfy me.—A. I could not undertake to pick out or select or name or describe any tariff that applied in that way. Most any State rate that we had was used at times, as shipments were offered, on interstate rates.

Q. Now name one tariff.

Mr. ROSENTHAL. He has already told you he could not do that.

Q. Name one.—A. I can't pick out any particular tariff.

Q. I will give you until to-morrow to hunt them up. You can find them, can't you?

Mr. ROSENTHAL. Possibly.

A. I can find tariffs, but I can not find shipments neces-
10428 sarily to match up with the tariffs. I have no record of the tonnage or the particular shipments that moved.

Q. But the Chicago, Milwaukee & St. Paul freight office has?—A. They have not.

Q. The freight auditor has?—A. Possibly the auditor has.

Q. And the freight auditor is under the traffic department, isn't he?—A. Absolutely not.

Q. Whom is he under?—A. He is under the general auditor. I don't know whom he reports to. He does not have anything to do or answer to the freight department in any way.

Q. Will you give me one tariff, published or not published, not filed with the Interstate Commerce Commission, which was ever used by the Milwaukee road during the year 1906 for an interstate shipment?

Mr. ROSENTHAL. He has already answered that and told you that there were 12,800, and he could not pick out any one now.

Q. You know there were not 12,800 local State tariffs not filed with the Commission, were there?—A. Oh, no.

Q. There were very few of them that were not filed with the Commission?—A. Very few now, but there were a good many before——

Q. In 1906?—A. Before the order that I refer to; yes.

Q. Tell me one in 1906, before that order, that was not filed with the Commission—one of the Chicago, Milwaukee & St. Paul Railroad.—A. I can't—I don't think that I can name any tariff.

Q. Describe it in terms. Tell me what tariff. I don't care about the number of the tariff.—A. I won't undertake to describe any particular tariff issued by the company.

Q. Name some tariff between any point on the road. You
10429 need not describe the tariff by number.

Mr. ROSENTHAL. He is not testifying to a tariff. He is testifying to a general course of practice.

Q. But that general course of practice includes tariffs, he says, that were not filed with the Commission. Now, I want to know what they are.

Mr. ROSENTHAL. Yes; and you might as well ask a lawyer to repeat his Blackstone verbatim from beginning to end, and expect him

to do it, as to ask a freight man to name a tariff out of twelve thousand.

Q. I do not ask you to name a tariff out of twelve thousand. Tell me some rate that was used as a combination that was not filed with the Interstate Commerce Commission.—A. I have no record of the movement of tonnage, as I stated——

Q. No; I am not talking about tonnage.—A. Therefore I can't undertake to hitch up a shipment with a tariff, or know—in fact, I have no way of knowing——

Q. Well, if you have no way of knowing——A. A particular shipment that moved in that way.

Q. If you have no way of knowing how shipments were moved, how do you know that you did do it?—A. Because as general freight agent, in charge of all the traffic of the Chicago, Milwaukee & St. Paul Railway, I knew what was the common practice.

Q. If you knew the common practice, and it was so common as that, it seems to me you ought to be able to name some tariff, not by number, but some rate that was used in that way

10430 Mr. ROSENTHAL. He has already told you that he could not.

A. It may seem strange to you, but it does not to me, with the volume of business and the——

Q. Can you find one by to-morrow?—A. Can I find what?

Q. A tariff used by the Milwaukee road in 1906, that was not filed with the Commission, as a part of a through shipment?—A. No; I can't.

Q. Can you by Monday?—A. No, sir; because I have not the movement of freight.

Q. Well, find the tariff.—A. How am I going to be able to say whether there was a shipment moved under that tariff in the manner you describe, unless I know what shipment was made?

Q. You know that the Milwaukee office contains a record of every shipment just as well as I do.—A. I know that the general freight department does not contain the record of shipments, and I know that the record of shipments of 8,000 miles of railroad is a pretty great big record, and it is in the hands of the auditor.

Q. You know, don't you, that the freight auditor has in his office a record of every shipment?—A. Why, yes——

Q. Yes; very well.—A. He has got the waybills as a rule.

Q. You can very easily find out whether a tariff has been used as a part of an interstate shipment?—A. I testified that it was the common practice to do so. I can't very easily find out that reference to a particular shipment; no.

Q. Well find out whether you can or not. Isn't it a fact that if a shipment is consigned from Chicago to Omaha, it is waybilled?—A. Yes.

10431 Q. And a copy of the waybill goes to the freight auditor's office?—A. I don't know whether it does or not. I don't think it does.

Q. Do you pretend to say that you don't know that the freight auditor has a record of that?—A. No; that is not what I said.

Q. He has a record of the shipment, hasn't he?—A. No; but let me tell you how that shipment is moved.

Q. All right; you tell me.—A. Just to indicate to you that I do know how we move our freight.

Q. All right; just tell me.—A. That shipment will be waybilled from Chicago to Omaha. That waybill will be returned to the auditor from Omaha. You stated that a copy of the waybill was sent to the auditor from the forwarding station. I don't know whether it is or not.

Q. Either from the forwarding station or the receiving station?—A. Yes.

Q. It goes to the freight auditor, doesn't it?—A. That is what I stated; yes. I wanted you to understand just how we handled it, so you would have a better understanding of it.

Q. Now, you know about the important movements of freight on your line, don't you?—A. Well, I don't know. Sometimes I think I do.

Q. If freight moved from here to Omaha on a combination of local rates, you can very easily find the tariffs, can't you?—A. Find the tariffs?

Q. Yes; the tariffs.—A. I don't believe I understand you.

10432 I know of no freight movement, as I stated before, of any one particular shipment from Chicago to Omaha, that moved in any such manner as that. Therefore I could not undertake to locate any tariffs such as you refer to.

Q. You know what local tariffs you have in Iowa that were not filed with the Commission in 1906. Your records show it, don't they?—A. I don't think we had any tariff in Iowa in 1906 or before but what was filed with the Commission, because there is only one tariff, as I recall it—practically only one tariff in the State of Iowa, and that is the Iowa distance tariff, which with us has been filed with the Commission for a number of years.

Q. That is right—for ten years or more?—A. Yes.

Q. Now, there is a whole State where you did not use it. You did not use any State rate there which was not filed with the Commission, did you?—A. No; because as I state there was only one tariff in effect, practically, in the State of Iowa, which is regulated by the Iowa commission; and the rates of the Iowa commission are also used to and from certain interstate points; and therefore it was necessary to file that tariff. It is used in itself. The Iowa State tariff was used in itself between points that are interstate.

Q. Yes; so is the Minnesota State tariff, isn't it?—A. Well, no; I don't think so.

Q. And that has been filed with the Commission for more than ten years, hasn't it?—A. I don't think so. I would not swear to the filing of the Minnesota State tariff.

Q. That has been filed with the Commission, hasn't it, for
10433 years?—A. I don't believe it has, but now I would not testify to that, Mr. Kellogg.

Q. You can easily determine that, can't you?—A. What is that?

Q. You can easily determine whether it has or not?—A. Oh, I can easily determine as to whether the Minnesota distance tariff has or not, but you understand that there were many rates in Minnesota, while there was only one—or rather many tariffs in Minnesota while there was only one practically in Iowa, because the situation and condition was entirely dissimilar between the two States.

Q. Did the Milwaukee road have any local tariffs in Minnesota that were not filed with the Commission, that were used in interstate shipments?—A. I do not doubt but what they had.

Q. Please find them, I say, one; just bring me one.—A. I have told you before that I could not connect up the movement of any particular tonnage. I say that was the common practice, and undoubtedly shipments moved in that manner, but I can't pick out those shipments.

Q. But your waybills in your auditor's office show exactly at what rate the tonnage moved, don't they?—A. Yes.

Q. And that will show whether it was under a combination of locals or a through tariff, won't it?—A. If you pick out any individual waybill, it will show; yes.

Q. It will. Now, by going over your waybills you can very easily find shipments that moved on the local rates, can't you?

Mr. ROSENTHAL. Why, it might take thirty days to make
10434 up that information.

WITNESS. Mr. Kellogg, I would like to be able to give you statistics as to the tonnage represented by our way bills——

Q. I am entirely ignorant of that. I know something about it.—A. Well, you must know that that would be an immense task, to go through the way bills of the tonnage handled by the Chicago, Milwaukee & St. Paul Railway.

Q. You know about the general movements of certain particular commodities, don't you?—A. Well, I undertake to know something about the movements of commodities. It is a good deal of a task.

Q. And prior to 1906 your road was in the habit, was it, or had the custom of shipping freight consigned on through bills of lading, from one State into another, on tariffs not filed with the Interstate Commerce Commission. Is that true?—A. It was done by our company and by all others in the territory that we served, so far as I know.

Q. And you can not name or find a single shipment of that kind for me?—A. I do not undertake to do so, for the reasons explained.

Q. Now, you see if you can find one, and come back here to-morrow with it and give it to us, will you?—A. I will not undertake to go through tons and tons of waybills, seeking such information, in a department that is not under my control in any manner. I do not believe that it is proper for me to do so.

Q. You decline to do so?—A. I will render all the assistance I can——

Q. You decline to do so?—A. In getting such information. No; I do not decline anything. I say that I will render all
10435 the assistance I can, but I will not personally undertake that task, because it is a good deal of an undertaking.

Q. When did you commence to file your State tariffs with the Interstate Commerce Commission?—A. There were some State tariffs filed, and have been filed for years; but it became the general practice with the coming out of the order in 1906.

Q. Please find me some tariffs that you filed immediately after that order, that had not been filed before. That is in your department, isn't it?—A. Yes.

Q. Bring me some State tariffs that you filed immediately after that order was made, that had not been filed before, that had been in existence before. Will you do that?—A. I will look into it——

Q. All right.—A. And see whether there is anything on the subject.

Q. All right, look into it.

Mr. ROSENTHAL. That is open to search by you gentlemen as well as by us. A search made by your witnesses of the files of the Interstate Commerce Commission will just as readily disclose to you that information as a search made by our witnesses. (To the witness) And you are not under the slightest obligation to make the search.

Mr. KELLOGG. The search does not disclose anything of the kind.

Mr. ROSENTHAL. The search will disclose it fully. It will show fully the rates filed subsequent to September, 1906, by the Milwaukee & St. Paul road, and a further search will show whether those
10436 rates had been filed theretofore, and it is entirely within your grasp now, without any assistance from us, which we do not propose to render you to the extent of burdening ourselves in the way that you have requested us to.

Q. Now, I show you Tariff No. 24, about which you have been testifying, and the Illinois Freight Traffic Classification, known as the Illinois Classification, of date January 1, 1900, about which you testified this morning. Will you please look at that Illinois Classification and tell me how petroleum and its products is classified, what class it is?—A. I found it this morning under O, I think.

Q. How is petroleum oil?—A. Petroleum oil is classified 5th class in carloads.

Q. Now, I show you Tariff No. 24, and ask you what the rate is from Chicago to East St. Louis on oil, classified there as 5th class?—A. 18 cents, 5th class, from Chicago to East St. Louis.

Q. Now, the Illinois Classification is the one referred to in that Tariff 24, isn't it?—A. Yes; I don't know whether it is that issue. I suppose it is. It says here, "governed by the Illinois Classification except as noted."

Q. As so governed, then, the rate on oil by that tariff would be the 5th class rate to East St. Louis, wouldn't it, from Chicago?—A. By those two tariffs, yes—5th class.

Q. Now, those two tariffs were filed with the Interstate Commerce Commission, were they not? It is admitted that they are in this case.—A. Yes; I suppose so. I don't know anything about it.

Q. Now, I show you I. C. C. No. 1203 of the Chicago &
10437 Alton Railway Company, being an application sheet making Chicago rates applicable to Whiting, and ask you if it recites Tariff No. 24 and makes that rate that you referred to in Tariff 24 applicable to Whiting.—A. Makes the same rates apply from Whiting as from Chicago.

Q. Does it name specifically Tariff No. 24?

Mr. ROSENTHAL. Well, it shows on its face, doesn't it?

A. I don't think so.

Q. Oh, yes; it does, in connection with——A. That has got nothing to do with this. This stands by itself.

Q. We will see about that.—A. The same rates as apply between Chicago——

Q. Does that make that 18-cent class rate apply to Whiting?—A. It would make that rate if that was the only rate in effect from Chicago.

Q. Very well, then, if you had those three documents before you, and only those three documents, you would say the 18-cent rate applied from Whiting to East St. Louis, would you, on oil?—A. I would say that the rate as indicated by those three tariffs would be the Chicago rate, whatever is in that tariff from Chicago.

Q. What is the rate from Chicago in that tariff?—A. 18 cents.

Q. Then, having those three documents before you, and only those three, you would say the rate on oil in carloads was 18 cents from Whiting to East St. Louis, by those three documents, would you?—A. 5th class rate, 18 cents.

10438 Mr. ROSENTHAL. Is there any doubt about that, except as to the——

Q. Now, those three documents were filed with the Interstate Commerce Commission, and if any one was inquiring at the Interstate Commerce Commission office for the rate from Whiting to East St. Louis, they would say by those documents that it was 18 cents, wouldn't they?—A. I don't know anything about what they would say.

Q. If there were no other tariffs filed there from Whiting it would be a very simple matter to determine that it was an 18-cent rate, wouldn't it?—A. As I say, I don't know what they would quote, or what was their practice in the quotation of rates.

Q. If they quoted any rate, if those were the tariffs on file, it would be 18 cents, wouldn't it, if they quoted the true rate?—A. I don't know what they would quote. I don't know anything about what the Interstate Commerce Commission would quote. I was simply testifying as to what I would quote.

Q. Very well. Could they quote any other rate from that tariff?—A. I don't know. They might study it up and find some other rate to quote.

Q. You don't know of any other rate, do you? Now, will you tell me, if the 6-cent rate was not filed with the Interstate Commerce Commission, how they would know anything about it from any one of those documents?—A. I judge they would not know anything about the specific rate of 6 cents.

Q. There is not a word in that application sheet that gives them any notice of a 6-cent rate, is there?—A. The only word there
10439 is that whatever rate is in effect from Chicago would be in effect from Whiting. That is the only——

Q. But if it was not filed before the Commission there would be no notice of it, would there?—A. I don't know whether there would be any notice of it there or not.

Mr. ROSENTHAL. I suppose the shipper might inquire of the railway company as to what the rate is.

Q. Now, here is a long list of tariffs attached to this application sheet, among others this Tariff No. 24. What is that put on there for?—A. I have looked at this before, so I do not have to study it.

Q. I know you have. What is that?—A. My opinion of that is that it is a partial list of the rates applying from Chicago.

Q. Very well. That tariff was put down there as being a tariff applying from Chicago, wasn't it, which was made applicable to Whiting?—A. This provision here provides that whatever rate was in effect from Chicago will apply from Whiting.

Q. Yes. And the list——

Mr. ROSENTHAL. Wait a moment.

Q. And the list below is what?—A. Evidently a partial list of tariffs naming rates from Chicago, but nothing to show that it is a complete list, or any cross reference from one to the other.

Q. Is there anything to show that it is a partial list? Does it say that it is a partial list?

Mr. ROSENTHAL. It does not say anything about it.

WITNESS. It says that just as much as it says it is a complete list.

Q. Does it say it is a partial list?—A. It does not say
10440 anything about it either way, as I understand it.

Q. It does not anywhere say it is a partial list, does it?—A. It does not say it is a partial list or that it is a complete list. It does not explain what it is. As a matter of fact, there is no explanation of what that is.

Q. Very well. But you say it is a list of tariffs applicable from Whiting?—A. I say it is apparently——

Q. Apparently, yes.—A. A partial list of tariffs naming rates from Chicago.

Q. What do you think it was put on there for?—A. Just for that purpose, of being a partial list of the tariffs naming rates from Chicago.

Q. That is, you think that was put on there expressly to be a partial list, do you?—A. That is what I think, because in my judgment that list would not begin to cover all of the tariffs in effect from Chi-

cago. Chicago is too important a shipping point to be covered by any such list as that——

Q. Did not——

Mr. ROSENTHAL. Now, let the witness finish his answer.

A. And my understanding would be that that was simply a partial list. It seems to be largely tariffs issued by bureaus, and I judge that that was the reason that it was included to some extent; but that is just a supposition. There is no connection, no particular connection that I see between the clause here and this list of tariffs, nothing to describe it.

Q. Every one of those tariffs listed there is an interstate tariff, isn't it? Aren't they all interstate tariffs?—A. I don't think so.

10441 Q. Name one that is not.—A. I can't tell definitely, except as the statement is made here. It says here G. F. D. 2610, Local Illinois Stations on the C. & A. Railway. Now, I judge that might be local. Here is another one, 6020, local Louisiana and Bowling Green, Missouri. I don't know what that is; but that carries an I. C. C. number, and that evidently is not local. That evidently is an interstate tariff, but this other one, 2610, which is local, in effect May 20, 1900, says to and from Illinois stations on the C. & A. Railway, and does not carry an I. C. C. number, and apparently is local, as it is described there. I don't know.

Q. Now, if that is the case, why don't they put the 6-cent rate on that the railroads were using and not listed there? Will you tell me?—A. I can't tell you why they didn't put it on. They evidently did not consider it necessary. That was a State rate. There was no requirement at that time, as I understand it, that made it necessary to put the I. C. C. number on it, naming rates from Chicago to a point in Illinois.

Q. Isn't it a fact that the Interstate Commerce Commission required your road to list the tariffs on its application sheets, and that you complied with it?—A. No; I don't know that to be the case. I know that a request was made on us to have our tariffs show the references, and we did get out an application sheet in which we stated that all Chicago rates would apply, including those in the following tariffs, which was as a matter of fact a partial list.

Q. Then, didn't you report to the Commission that you had complied with their order?—A. I don't think so.

10442 Q. Did you bring the correspondence with you showing that?—A. No, I was not over at the office this noon.

Q. Will you do it?—A. I don't know. I will look up the correspondence if I can find it, and see what there is to it.

Q. In order that you may have the reference—I think I gave it to you, but I am not sure——A. Yes; you gave me the I. C. C. number.

Mr. ROSENTHAL. The Commission's filing clerk is here, and you can have that.

Mr. KELLOGG. I have telegraphed to Washington for the correspondence, and if Mr. Pierpont does not produce it, I will ask——

WITNESS. I did not have time this noon to look it up even.

Q. Now, did the Commission say——

Mr. ROSENTHAL. I submit that if you are going to have the correspondence here, we will save a great deal of time by having the whole correspondence in, instead of you reading a sentence or two from an alleged correspondence. I don't suppose Mr. Pierpont will undertake to say what the Commission said, unless the writings are submitted to him for his inspection.

Q. Now, after the Commission had directed you to show your list of tariffs on the application sheet, did your application sheet contain the following: "The rates authorized in above-described tariff will apply in connection with the following tariffs, supplements thereto or subsequent issues thereof?"

Mr. ROSENTHAL. I object to the form of that question.

A. What tariff is that?

Q. That is your application sheet——

10443 Mr. ROSENTHAL. Wait a minute.

Mr. KELLOGG. Wait a minute until I finish. That is the application sheet making Chicago tariffs applicable to Whiting.

Mr. ROSENTHAL. Now read that question to me, will you, please?

(The reporter read the question as follows: "Now, after the Commission had directed you to show your list of tariffs on the application sheet, did your application sheet contain the following: 'The rates authorized in above-described tariff will apply in connection with the following tariffs, supplements thereto or subsequent issues thereof?' ")

Mr. ROSENTHAL. I object to that, because it assumes that the Commission did direct the St. Paul road to list their tariffs on the application sheet. There is no proof as yet before us that that is the fact; and secondly, whatever notation was thereafter made upon any tariff or application sheet, that tariff or application sheet is the best evidence thereof.

Q. Answer the question.

Mr. ROSENTHAL. If you can.

A. I can't say as to whether it was or was not. What was the date of that letter that you speak of?

Q. 1904; December, 1903, and——A. I am very sure that in 1903 and 1904 our application sheet did not so read. Who wrote that letter you are quoting from?

Q. The auditor of the Interstate Commerce Commission.—A. The auditor?

Q. Yes, sir.—A. As I remember it, the auditor's corre-

10444 spondence used to be quite prolific with reference to particular tariffs. I don't know whether you refer to some order relating to all tariffs, or whether this is an order relating to just one tariff.

Q. This correspondence related to a particular tariff, in which the Commission called to your attention that I. C. C. No. A–6102 did not have a list of the tariffs, and required you to make it, and that you immediately thereafter did publish a Supplement No. 4, complying

with the Commission's request, in which you stated, among other things: "Rates authorized in above-described tariff will apply in connection with the following tariffs, supplements thereto or subsequent issues thereof." Then followed a list of tariffs.

Mr. ROSENTHAL. What are you reading from?

Mr. KELLOGG. I am reading from a letter of the auditor of the Interstate Commerce Commission, quoting that statement from your supplemental list.

WITNESS. Who signed it?

Mr. KELLOGG. The auditor.

Mr. ROSENTHAL. Wait a minute. I would like to see the letter, please.

Mr. KELLOGG. There is the entire correspondence. The letter is from the auditor to the C., B. & Q. road. I will offer it in evidence.

Mr. ROSENTHAL. The C., B. & Q. road?

Mr. KELLOGG. Mr. W. B. Hamblin, in which he states what the Milwaukee had done, and other roads.

Mr. ROSENTHAL. I thought you were talking about a letter
10445 to the St. Paul.

Mr. KELLOGG. No; I did not say so.

Mr. ROSENTHAL. Let me see that letter.

Mr. KELLOGG. Yes; just wait until I get through, and then I will hand it to you.

Q. Now, will you produce that correspondence?

Mr. ROSENTHAL. Now, just a minute, please. Is there any question pending now, other than this question asking him to produce the correspondence with the St. Paul?

Mr. KELLOGG. No; that is all now.

Mr. ROSENTHAL. All right.

Q. Will you produce that correspondence?—A. I don't know.

Mr. ROSENTHAL. We will be glad to look it up.

WITNESS. I will look it up and see what there is about it. I don't remember it; it is a long time ago.

Q. Do you remember the Commission calling your attention to that?—A. No, I don't. I remember we got a good many letters from the auditor of the Commission, asking about different clauses on different tariffs.

Q. Do you remember that you got letters from the auditor calling your attention to the fact that your application sheet to Whiting did not contain the list of tariffs, and that you then complied with it?—A. No; I don't remember that, but it is not strange that I don't, as I explained to you before. There are a good many tariffs.

Q. Now, calling your attention again to the I. C. C. No. 1203, which is the application sheet of the Chicago & Alton, at the bottom of the list of tariffs appears the following in large
10446 type: "Subject to the classification and rules provided under the above tariffs." What does that mean?—A. That would refer to all of the tariffs covered by that page, I should understand.

Q. "The above tariffs" are those listed, are they not?—A. I would not think so necessarily.

Q. Are there any other tariffs mentioned?—A. Yes.

Q. Where?—A. The same rates as apply between Chicago; therefore any——

Q. Then follows a list of tariffs?—A. No; I don't understand it follows a list of tariffs.

Q. It says so on its face, doesn't it?—A. No; there is no caption to describe what that list is.

Q. Are there any other tariffs mentioned above, either by number or otherwise, than those listed immediately above?—A. Why, otherwise, yes.

Q. How is it mentioned?—A. Because it says here, same rates as apply between Chicago——

Q. Does that mention any tariff?—A. It means any tariff that names rates from Chicago.

Q. Whether it was filed with the Commission or not?—A. That is my understanding of it.

Q. Will you tell me how a shipper was to find that tariff from that application sheet?—A. This unfiled tariff?

Q. Certainly. How was he to find it?—A. Go and ask for the rate, and he would get it probably, for one thing. If he was to go to Washington, I don't know whether he would find it or not.

Mr. ROSENTHAL. How did he find it when an application 10447 sheet was filed? It did not name any tariff at all.

Mr. KELLOGG. I am not asking that question.

Mr. ROSENTHAL. As application sheets were for many years——

Mr. KELLOGG. You wait until I get through.

Mr. ROSENTHAL. Why, he would go to the railroad office and inquire for it, of course.

Q. If the shipper had that tariff before him, I. C. C. 1203, how would he find the rate from Whiting on that list? How would he find it?

Mr. ROSENTHAL. On what list?

Mr. KELLOGG. In that tariff.

A. He would not find it, except the reference there to the Chicago rate.

Q. Then, if he went to the Interstate Commerce Commission he would not find it?

Mr. ROSENTHAL. There is no rate named from Whiting in that application sheet, is there?

Q. Is there any word on that that names a 6-cent rate?

Mr. ROSENTHAL. Or any other?

A. Simply names the same rates as are in effect from Chicago; but you could not fool any shipper on that. It would be the same with reference to all your suburban points here. Every one of them would ascertain, and would soon find out and know what the rates were from Chicago, and demand them.

Q. Although these billing orders were secret and not published or filed?

Mr. ROSENTHAL. They were not secret.

A. I don't take it that it was secret. I don't know anything about that billing order, but I don't understand that any
10448 tariff that was not filed in Washington was necessarily secret. I supposed that it was an open rate from Chicago, which would be quoted if anybody made inquiry for a rate from Chicago.

Q. But there is nothing on the three documents there that points to a 6-cent rate, is there?—A. No; except that any rate that was in effect from Chicago would apply from Whiting.

Mr. ROSENTHAL. Mr. Kellogg, have you got the correspondence between the C., B. & Q. road and the Interstate Commerce Commission with respect to the application sheet?

Mr. KELLOGG. Yes.

Mr. ROSENTHAL. May I look at it?

Mr. KELLOGG. Yes [handing papers to Mr. Rosenthal]. I am going to offer it in evidence.

Mr. ROSENTHAL. We have been trying to get it from the Interstate Commerce Commission, and they said they did not have it and could not find it.

Mr. KELLOGG. I never heard of that. I am informed by Mr. Wilkerson that it was here during the trial and that he tried to get it in evidence.

Mr. ROSENTHAL. No, no; the Q. case has not been tried.

Mr. KELLOGG. Oh, that was here, too.

Mr. ROSENTHAL. That may be, but recently we tried to get it.

Mr. KELLOGG. It was here, I think.

Mr. ROSENTHAL. They lost track of it.

Mr. KELLOGG. We hunted it up and got it.

Q. Now, I show you I. C. C. No. 1579, naming a 10-cent rate effective August 15, 1903, which you testified about. Does that
10449 name a 10-cent rate from Whiting to East St. Louis?—A. Yes; in itself, Belt Junction, and provides there that the rates, including switching from Whiting, to East St. Louis, 10 cents.

Q. That is a commodity rate, is it?—A. A commodity rate.

Q. Then, why would you say that the 6-cent rate applied?—A. Because every rate that was in effect from Chicago would properly apply.

Q. That was apparently in effect, wasn't it, direct from Whiting?—A. Whatever rate is the lowest, you would give to the shipper. The shipper gets the benefit of the lowest rate, where there are two.

Q. Suppose he did not know of the other lower rate?—A. I never knew a shipper that was not pretty well posted.

Q. There is a 10-cent rate?

Mr. ROSENTHAL. The Interstate Commerce Commission has provided that where there are differing rates between the same two points, the shipper shall be given the lower of the two rates.

Q. Now, do you think that rate applies?—A. No; I should say, Mr. Kellogg, based on the practices of the railroads at that time,

that the lowest rate that was authorized, from Chicago to East St. Louis, would be properly applied from Whiting, under that tariff that I had here a minute ago.

Q. That is certainly a rate authorized on its face from Whiting to East St. Louis, isn't it, of 10 cents a hundred, a commodity rate?—A. It names a rate from Belt Junction. I don't know just what Belt Junction is. What is Belt Junction?

10450 Mr. ROSENTHAL. Do you contend, Mr. Kellogg, that that made a valid rate, 10-cent rate, between Whiting and East St. Louis?

Mr. KELLOGG. I am asking this witness.

Mr. ROSENTHAL. Does the Government make that contention in this case? The Government is contending——

Mr. KELLOGG. You address your questions to the witness.

Mr. ROSENTHAL. No; I am asking Government counsel. Does Government counsel decline to answer as to what his contention in that respect is?

Mr. KELLOGG. I decline to be interrupted when I am cross-examining this witness.

Mr. ROSENTHAL. He evidently declines to answer. Well, then, counsel for the defense states (and this is for the benefit of the witness) that Government counsel has heretofore contended that the 10-cent rate or alleged 10-cent rate which he has just been showing you does not make a rate from Whiting to East St. Louis that was a lawful rate.

Mr. KELLOGG. I decline to allow you to state my positions. I will state them myself when I get ready.

Mr. ROSENTHAL. I just asked you to state it, and you declined to state it, and I was compelled to state it for you. You should not try to get the witness to state something different from what you yourself are contending for.

WITNESS. In connection with that tariff which we just had, making a 10-cent rate, it refers to Belt Line Junction. I don't know what station that is, so I can't answer that properly.

10451 Q. Now, I show you the application sheet of the C., B. & Q. road, effective December 28, 1903, that you testified to, and the supplement, Amendment 3½ to the same tariff. The supplement was filed with the Commission April 4, 1904. What is the supplement?—A. It seems to be a list of tariffs. "Rates authorized in tariff hereby amended will apply in connection with the following numbered tariffs or subsequent issues."

Q. That is a supplement to the application sheet that you testified to, isn't it?—A. Yes; Amendment 3½ to 4721.

Q. Does that contain a list of tariffs that will be made applicable to Whiting?—A. Yes, sir; it does.

Q. Yes; that supplement. Does it?—A. Yes, sir; a list of tariffs not only from Whiting, but from the various points covered by the C., B. & Q. application sheet.

Q. But that is a list of tariffs applicable from Whiting, isn't it, too?—A. Yes; under the application sheet it would make the rates named in these tariffs also apply from Whiting.

Q. Now, is Tariff No. 24, about which you testified, making an 18-cent rate from Chicago to East St. Louis on oil, named in that supplement?—A. Yes; there it is. Chicago & St. Louis Traffic Association, I. C. C. 3, that is it.

10452 Q. Now, having those three documents before you and the Illinois Classification and no other documents, what would you say was the rate on oil from Whiting to East St. Louis?

Mr. ROSENTHAL. From those three documents?

Q. Yes.—A. From those three documents alone, just as I have them here, I would judge it would be the 5th class rate.

Q. 18 cents?—A. 18 cents.

Q. It would name an 18-cent rate, wouldn't it?—A. Yes; 5th class, 18 cents.

Q. Now, if those were the only documents filed with the Interstate Commerce Commission naming a rate from Whiting on oil over the C., B. & Q. road, one inquiring at the Interstate Commerce Commission for the tariffs on oil would get an 18-cent rate, wouldn't he?—A. Well, there you are up to that old question. I don't know what the Interstate Commerce Commission would quote.

Q. Could they quote anything else?

Mr. ROSENTHAL. They might refer him back to the railway company.

WITNESS. I don't know. It is possible to make mistakes and quote all sorts of things, I suppose. This is a great big tariff, but I can't answer for the Interstate Commerce Commission, as to what they would quote.

10453 Mr. KELLOGG. I offer in evidence the correspondence between W. B. Hamblin, the traffic manager of the C., B. & Q. road, and the auditor of the Interstate Commerce Commission in relation to filing that statement.

Mr. ROSENTHAL. You mean you offer it as your exhibit?

Mr. KELLOGG. Yes; as part of the cross-examination.

Mr. ROSENTHAL. Well, I can not do any more, of course, than object to your offering an exhibit at this time. I do no think you have any right to offer an exhibit while we are on our defense.

Mr. KELLOGG. You do not raise the question that the copy of the letter from the auditor to Hamblin is a copy instead of the original document? If you do, I will go to the C., B. & Q. office and get the originals.

Mr. ROSENTHAL. I do not think so, but we will take occasion to look them over.

Mr. KELLOGG. All right.

Mr. ROSENTHAL. As I say, we wanted to examine this correspondence. I do not make that point now.

The letters were marked petitioner's Exhibits 930A to 930H, inclusive.

Mr. ROSENTHAL. I object to it further, upon the ground that it is incompetent and immaterial.

Q. Now, do you understand this petitioner's Exhibit 571 to be a partial list of tariffs or a complete list?

Mr. MARTYN. What tariffs?

Mr. KELLOGG. The tariffs made applicable to Whiting.

A. It does not say. There is no way of knowing.

10454 Q. It purports to be a complete list, doesn't it?—A. It does not say. It just provides that "rates authorized in tariff hereby amended will apply in connection with following numbered tariffs or subsequent issues." It does not say whether those are the only rates or not.

Q. Well, what do you understand from it?—A. I don't understand.

Q. I show you a letter from the auditor to Mr. Thomas Miller, Chicago, Burlington & Quincy Railroad, of December 30, 1903, in which the auditor says: "Dear Sir: G. F. O. 14726, I. C. C. 4721."—A. That is it.

Q. "Should be reissued or amended to make proper reference to schedules on file with the Commission showing rates from Chicago to points named therein. Yours, truly. * * * auditor." Now, after that, that supplement was filed. What would you say it intended to cover?—A. I do not know. I would say that it was intended to satisfy the auditor's suggestion there, but did not necessarily do so. That is, I do not know as it would necessarily cover all the tariffs.

Q. No, but it purports to cover everything, doesn't?

Mr. ROSENTHAL. No.

A. Well, I wouldn't know anything about that letter. I am simply interpreting this [pointing on document in front of witness]. I say that the tariff on its face does not say whether it is a complete list of the tariffs or not.

Q. If it was not a complete list it would not comply with that letter, would it?—A. Let me read that again.

Q. Yes, sir, read it.

Mr. ROSENTHAL. That letter does not call for all tariffs.

10455 Mr. KELLOGG. We will see whether it does or not.

WITNESS. It says: "I. C. C. 4721 should be reissued or amended to make proper reference to schedules on file with the Commission showing rates from Chicago to points therein named." It indicates to Mr. Thomas Miller that the tariff should be reissued in that way. As to whether Mr. Thomas Miller did so I have no way of knowing.

Q. I did not ask you that. To comply with that letter they should file a complete list of tariffs applicable, shouldn't they?—A. I think that was the purpose of the auditor of the Commission in making the request.

Q. That is it, exactly.—A. But I know nothing about that, in interpreting this tariff itself.

Mr. KELLOGG. Now, I offer in evidence a letter from the auditor to Mr. Fred A. Wann, of August 15, 1901, Mr. Wann's reply thereto,

and the auditor's reply to Mr. Wann on the subject of reissuing the application sheet of the Chicago & Alton to show the list of tariffs.

The letters were marked petitioner's Exhibit 931A, 931B, and 931C, respectively.

Mr. ROSENTHAL. Same objection as to the C., B. & Q. correspondence.

Mr. KELLOGG. The objection does not include the point that the letter from the auditor is a copy, does it?

Mr. ROSENTHAL. Not if you say those are from the files.

Mr. KELLOGG. Mr. Smith says they are from his files and are his manifold copies.

Mr. ROSENTHAL. All right.

10456 Q. Now, I show you again the application sheet of the Chicago & Alton, about which you were testifying, which you said contained a partial list, in your opinion, of the tariffs applicable to Whiting, and I show you the previous one, I. C. C. No. 981, containing no list of tariffs, the I. C. C. No. 981 being effective August 13, 1901, and read you this letter from the auditor to Mr. Fred A. Wann, general freight agent, Chicago & Alton Railway, Chicago, Illinois, date August 15, 1901—two days later. "Dear Sir: Your I. C. C. No. 981, taking effect August 13, 1901, does not plainly show the rates to be charged as the law requires. I have to request, therefore, that the schedule be reissued as a supplement to the tariffs showing the rates, or that reference be at least made to the I. C. C. numbers of such tariffs, so that the Commission may have ready access to same. Respectfully, yours, * * *, auditor." When the tariff or application sheet was reissued it did contain a list of tariffs. Now, in the light of that do you believe it was intended to cover a partial list?

Mr. MARTYN. Two years later?

Mr. KELLOGG. Yes; nearly two years before he complied with it.

A. Is there anything to show that he was complying with that at all; is there? There is no connection between this letter and him, is there?

Q. Yes; this is a reissue of this previous tariff.—A. But you do not believe he issued this tariff in 1903 complying with a letter from the auditor dated August 15, 1901, do you?

10457 Q. See if the numbers do not so provide.—A. Why, they criticise and question this tariff, and when this criticism was received they, apparently, took no action.

Q. Oh, yes, they did.—A. What did they do?

Q. They wrote back protesting against it, and there is another letter there written from the department to Mr. Wann, dated September 4, 1901, in which it is stated: "Your letter of August 20th in reply to mine of the 15th, relative to your I. C. C. 981: The schedule in question (which you term an application sheet) is in fact an amendment to all tariffs affected, in that it increases the number of points between which the rates in said tariffs will apply. Copy thereof should, therefore, be attached to each of such tariffs, or, in

lieu of that, I. C. C. No. 961 should give specific reference to the I. C. C. numbers of the tariffs affected thereby. As requested, I send you under separate cover copies of various documents governing the issuing and filing of rate schedules. Yours, truly, * * *, auditor."—A. What date is that?

Q. The fall of 1901. Now, when it was reissued, June, 1903—a year and three months later—it did contain the list of tariffs.—A. Did they drop it after writing this letter?

Q. I don't know. The letter called it to his attention.—A. There evidently was no compliance with that letter because the——

Q. If the next one issued did contain a list, it was a compliance, wasn't it, at that time?—A. It does not seem to me it was a compliance with the letter because it was written so long in ad-
10458 vance. Of course I have no way of knowing anything about that, except there is absolutely no connection between the tariff for Chicago rates and the list of tariffs; and in my judgment, knowing what tariffs are likely to be in effect from Chicago, this list is not complete. That is all I can tell you.

Q. Why is the list of tariffs attached?—A. There is not anything to show why it is attached. I say that I think it is a partial list, possibly to cover the point made by the auditor; but it seems strange, if it is, they would have waited for almost two years before doing it. But all I am interpreting is the tariff as it reads, and to a tariff man, a rate man, or the public that tariff (as I see it) authorized Chicago rates from Whiting.

Q. Why was the list put on there?—A. I do not know, but there is absolutely no connection or nothing to describe what it is.

Q. What did you put them on the St. Paul's tariffs for—their list of tariffs?—A. The list of tariffs that we published, I think, were complete in this way: My recollection of our issue is that it was—I can't give you the wording, but we said that all tariffs naming rates from Chicago would apply, including the following. Some such reference as that.

Q. Have you got your tariff sheet?—A. No.

Q. Your application sheet?—A. What, with me? No; I haven't got it.

Q. Will you bring it, together with that correspondence I called your attention to?—A. I told you that I would look up that correspondence; but in that it does not seem to me that the
10459 C. & A. undertook to comply with that letter, because they apparently paid no attention to it.

Q. They didn't undertake to comply with it immediately?—A. They must have lost it.

Q. But they did comply with it a year and a half later, didn't they?—A. Well, I doubt it.

Q. You doubt it?—A. I don't think so. I don't think there was any connection here.

Q. You don't? Well, tell me the connection between I. C. C. No. 981 and——A. It might have been reissued, and it undoubtedly

would be reissued by all lines at various times. It was reissued after two years' time, almost. But that is just guessing at what moved the C. & A. I have no way of knowing.

Q. I. C. C. No. 1203 is a reissue of I. C. C. No. 981, isn't it?—A. Yes.

Q. It is, isn't it?—A. It undoubtedly would have been reissued regardless of anything that came up.

Q. I ask you if it was a reissue, Mr. Pierpont?—A. It says so.

Q. Now, then, between the issue of 981 and 1203 the Interstate Commerce Commission told them that 981 did not comply with the law, and that they must show a list of tariffs, and 1203, when it was reissued, did show a list of tariffs, and yet you say there is no connection, do you?—A. Why, I say that the request from the Interstate Commerce Commission on August 15th, 1901, apparently was not what led to the reissue of the tariff in June, 1903.

Q. How do you know?—A. Because of the dates.

Q. Simply because they waited? Do you always immediately comply with the Commission's requests?—A. Well, not always.

10460 Q. No.—A. There are some cases where there is no compliance at all, possibly, after an argument or the question is disputed. But I do not know of any case where the Commission have required our company or any other railroad company to take action that we postponed that action for two years. Therefore, I can not make any connection between the letter from the Commission and the reissue of the application sheet.

Q. Now, will you produce your application sheet and the supplement and the correspondence?—A. I explained to you that I would look it up and see what I could find of it.

Q. I show you I. C. C. No. 459, which was the Pennsylvania Railroad Company's tariff from Olean to Norwood, New York, filed with the Interstate Commerce Commission. What rate does that tariff name, standing by itself, from Olean to Norwood, New York?—A. 26½ cents.

Q. On oil?—A. On oil.

Q. Now, is it customary to file percentage sheets with the Interstate Commerce Commission?—A. With the Interstate Commerce Commission?

Q. Yes, sir.—A. I don't think so.

Q. Percentage sheets and division sheets are for the private use of the railroad companies, aren't they?—A. No; not necessarily. It depends on what they provide. Take this tariff, for example; it refers to the route——

Q. Now wait. Just answer my questions. You will have abundant opportunity to make your explanations. You say it is not customary to file percentage sheets with the Interstate Commerce Commission.—A. I don't think so.

10461 Q. Why?—A. I explained this morning we call them division sheets in the West.

Q. Well, division sheets, then.—A. We do not file them.

Q. Why?—A. Because as a rule the Interstate Commerce Commission are not interested as to the divisions between carriers.

Q. Why are not the Interstate Commerce Commission interested in the divisions between carriers?—A. Because I do not think they have ever indicated any special interest in it. They have control—I don't mean by that to deny any control——

Q. I understand that perfectly. Why are they not interested in the divisions between railroads?—A. Why haven't they required the filing, you mean?

Q. Yes.—A. I do not know.

Q. You say because they are not interested in it?—A. They have not taken an interest in it. I don't know. I understood they did have a right to make divisions where carriers failed to do so between themselves.

Q. But the custom and the practice has been not to file division sheets and percentage sheets with the Interstate Commerce Commission; isn't that true?—A. That is true as far as I know. It has not been the practice.

Q. Isn't it because the Commission, and therefore the public, is not interested in the division of the rates between two railroads? It is the total rate they are interested in?—A. That is generally the case.

Q. And that is the reason they are not required to be filed?—A. I don't know as to that.

10462 Q. Well, that is generally the case, isn't it?—A. Generally speaking, the shipper is not interested in the division.

Q. Yes; that is it. The division sheet, therefore, is a matter usually that interests the two railroad companies carrying the stuff, or three, or whatever the number is?—A. Yes; that is of deep interest to them.

Q. Now, isn't it generally true also of the routing of the freight that the shipper is not particularly interested in that?—A. We think it ought to be true, but it is not. Shippers very often select their own route.

Q. Yes; and you send it that way if you want to, and if you don't you don't.—A. If we don't we get into trouble as a rule.

Q. Hasn't the court held that you don't get into trouble by doing that?—A. No; they have not. It is my understanding that unless our tariffs specifically provide on their face that the initial line reserves the right to route through to destination, that we have got to respect the route of the shipper. I think that is the last order of the Interstate Commerce Commission. That is my recollection of it.

Mr. ROSENTHAL. You are quite right about that.

Q. Now, on the face of this tariff it named a 26½-cent rate, and that tariff was filed with the Interstate Commerce Commission, the rate being from Olean to Norwood, wasn't it?—A. Yes. That is what I stated. My understanding would be that if a shipment was delivered at Olean without any further instructions than to deliver it at Norwood, it would have been the duty of the carrier to have taken it through at 26½ cents, so far as that tariff is concerned.

10463 Q. Now, if the shipper had no division sheet in his hands and did not know anything about the division sheet, and took a shipment of freight there, and the railroad took it and shipped it from Olean to Norwood through Rochester, what rate would he pay?—A. Under——

Q. No, I am saying if he did not know anything about the division sheet at all, never saw it.

Mr. ROSENTHAL. If who didn't?

Mr. KELLOGG. The shipper.

A. And the shipper directed the movement through Rochester?

Q. No; the shipper made no direction, and the railroad company took it through Rochester to Norwood, what would the rate be?

Mr. ROSENTHAL. If there was any rate at all.

Mr. KELLOGG. Now let the witness answer. I don't want you to answer.

Mr. ROSENTHAL. I know, but your question assumes there necessarily was a rate. I add to that if there was any rate.

Mr. KELLOGG. I object to your answering the question.

Mr. ROSENTHAL. I object to the question because——

Mr. KELLOGG. I object to your telling this witness what to answer, that is what I object to.

Mr. ROSENTHAL. Now, you have got your objection.

Mr. KELLOGG. I ask the examiner to permit me to examine this witness without Mr. Rosenthal telling the witness what to answer.

The EXAMINER. If Mr. Rosenthal wants to enter an objection to the question he has that privilege.

10464 Mr. KELLOGG. He isn't entering an objection, that is not what he wants; he is simply trying to tell the witness what to answer. I want an answer to my question.

Mr. ROSENTHAL. Now, are you through? Read the question, please.

(The last questions asked by Mr. Kellogg were read by the reporter.)

Mr. ROSENTHAL. I object to the question upon the ground that it assumes there would necessarily be a rate. There might not be any rate at all.

Q. What is your answer?—A. My understanding from a traffic man's standpoint would be that there would be no rate, there would be no way of dividing it. There would be no arrangement on account of the provision here with reference to the routing.

Q. What is there in that tariff that tells the shipper, who simply has the tariff, that there is no rate from Olean to Norwood?

Mr. ROSENTHAL. I object to that upon the ground that that is not any test of anything, whether there is anything in the tariff or not.

Q. Answer the question.—A. There is a rate from Olean to Norwood, but——

Q. By way of Rochester.—A. No; it says here "route in accordance with agreed percentages."

Q. Well, agreed by whom—by the shipper? Has he agreed to any percentages?—A. The shipper is shown to be interested because the notation is made in the document that is given to the shipper from which he gets his rate.

10465 Q. That is simply a question of routing, isn't it?—A. It is not usual to do that.

Q. That is simply a question of routing, isn't it?—A. It says "route in accordance with agreed percentages."

Q. Supposing the shipper did not care which way it was routed, why would he look at that?—A. But if there were not any divisions or arrangements for a through rate via Rochester, then this rate could not apply that way.

Q. Tell me how the shipper is to know that there isn't any route through Rochester—where is he to find it?—A. Simply that. That indicates there. It provides that he must ascertain the routing from some other publication.

Q. Does that say so?—A. It says so. It says "route in accordance with the percentage sheet."

Q. Isn't that a direction to the railroad agent to route?—A. Not necessarily; no.

Q. Is there any statement there that the shipper must route the stuff himself?—A. Oh, no, no; there is nothing there that says the shipper must route it.

Q. It doesn't say anything about the shipper.—A. But there is something there on the face of the tariff. It says if a shipment has to move by a route not provided for in the percentage sheet referred to here, that this rate would not apply.

Q. Where does it say that?

Mr. ROSENTHAL. That is it.

Q. Tell me where it says that.—A. That is my interpreta-

10466 tion of what is said here.

Q. Isn't that simply a direction to the railroad agent?—A. It means a great deal to the shipper as well, for the reason that if a shipment moves via a junction point on a railroad where there are no through rates and divisions, overcharges would result, of course.

Q. Tell me how the shipper is to know anything about the division sheet, will you? They are not filed with the Commission.—A. The shipper would not know, except this would probably lead him to inquire how this shipment was routed.

Q. And then he would find a sheet that is marked "Not to be posted?"—A. Yes.

Q. What does that mean, "Not to be posted?"—A. Not to be put out in a public file, I presume; that is my understanding.

Q. To be kept private?—A. Not necessarily to be kept private, but not to be put out in the——

Q. The public file?—A. No; the file out in the waiting room of the station. Just a division sheet.

Q. Then it is your understanding, is it, Mr. Pierpont, that the shipper is bound to know and find out the contents of a document

which on its face is marked "Not to be posted" and is not filed with the Commission? That is your understanding, is it?—A. My understanding is that there would be no through rate between Olean and Norwood if a shipment moved via a junction provided specifically against.

Q. Do you give that as an opinion of law or of fact?—A.
10467 I give that as an interpretation of that tariff. I know nothing about law.

Mr. ROSENTHAL. Well, you are fortified in that by the expert of the Interstate Commerce Commission presented by the Government in this case. He testified likewise.

Mr. KELLOGG. He did not testify to anything of the kind.

Mr. ROSENTHAL. Well, he did. The record will so show.

Q. When did you first see this tariff?—A. What tariff?

Q. The one you have been testifying about.

Mr. ROSENTHAL. Which one?

A. The C. & A. tariff?

Q. No; I am talking about the Pennsylvania tariff.—A. I didn't really see the tariff to examine it until to-day, this morning, when I was looking at it.

Q. Well, did you see a copy of it?—A. I don't know. I just glanced at a tariff of the kind.

Q. Who gave it to you?—A. I don't know.

Q. Who talked with you about it?—A. Why, I was asked how I would interpret a tariff of that kind.

Q. Who asked you?—A. Mr. Martyn, I think it was.

Q. How long ago?—A. Oh, I don't know just when it was. Two or three weeks ago. No; a day or two ago, I guess it was.

Q. Did he tell you how they interpreted it?—A. No; he didn't have to tell me how they interpreted it.

Q. He didn't tell you anything about it?—A. I am perfectly able to interpret tariffs on my own account, Mr. Kellogg.

Q. Oh, are you?—A. I had no knowledge of the situation there, so that I could only interpret it from the face of the tariff.

Q. Please return to-morrow and bring that correspondence
10468 that I asked you about.

Mr. ROSENTHAL. Mr. Pierpont has to go before the Interstate Commerce Commission and will have to come back Monday morning.

Mr. KELLOGG. Well, come back Monday morning with it, then. Before we adjourn here I want to have that correspondence.

Mr. ROSENTHAL. Which correspondence?

WITNESS. I told you I would look it up and look into it.

Mr. ROSENTHAL. You mean the Interstate Commerce Commission correspondence? You can get that from the Interstate Commerce Commission by Monday morning.

Mr. KELLOGG. I want to examine Mr. Pierpont on it when I get it.

The witness was excused until next Monday morning.

10469 W. D. HURLBUT, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct-examination by Mr. ROSENTHAL:

Q. State your full name, please.—A. William D. Hurlbut.

Q. Where do you live?—A. Chicago.

Q. What is your occupation?—A. I am the traffic manager for the Wisconsin Pulp and Paper Manufacturers.

Q. And have been for how long?—A. I have been since March 1, 1907.

Q. And before that what was your occupation?—A. Immediately prior to that for a period, however, of only about four months, I was general freight agent for the Missouri Pacific and the Iron Mountain railroads, with headquarters in St. Louis.

Q. And before that?—A. Before that I was connected as traffic manager with the same Wisconsin pulp and paper mills that I am connected with now, in the same capacity.

Q. For how long?—A. That was for about six months. Prior to that time I was traffic manager for the General Paper Company.

Q. And then what before that?—A. Back of that I was traffic manager for the National Hardwood Lumber Association for two years.

Q. What has been your railroad service?—A. Sir?

Q. How long were you in the railroad service?—A. I was in the railroad service from 1875 until 1902.

Q. Until you entered these other positions which you have indicated?—A. Yes; those other commercial positions.

10470 Q. Can you tell us what your railroad experience was, generally speaking?—A. My railroad experience was entirely in the general freight department, and almost exclusively with the Illinois Central and the Yazoo & Mississippi Valley railroads, the latter being, I might say, a part of the Illinois Central system. I was office boy, clerk, stenographer, tariff clerk, chief clerk, assistant general freight agent, general freight agent, and general coal agent, at different times, of those two companies.

Q. Were you ever located here in Chicago while engaged in the service of those railroad companies?—A. From 1875 until 1892. In the latter year I went to Memphis and was located there for four years; subsequent to that I was three years in Louisville, and about the 1st of January, 1900, returned to Chicago as general coal agent of the Illinois Central system.

Q. Were you ever connected with the Illinois Central southern lines, with headquarters at Louisville?—A. Yes, I was general freight agent for the Illinois Central southern lines, likewise for the Yazoo & Mississippi Valley Railroad for three years.

Q. During what years, do you remember?—A. I went to Louisville the 1st of August, 1896, and returned to Chicago about the 1st of January, 1900. Prior to 1896 I was assistant general freight agent of the Illinois Central and the Yazoo & Mississippi Valley in charge of their southern lines, located at Memphis.

Q. Where did that division of the Illinois Central run?—A. That division of the Illinois Central?

Q. Yes, sir.—A. The southern lines of the Illinois Central
10471 include the line running from Cairo to New Orleans, with several branches; likewise from Louisville, Kentucky, down to Memphis, with a number of branches; the Yazoo & Mississippi Valley road runs from Memphis to New Orleans, with several branches.

Q. Was there a branch running from Evansville, Indiana, to Grand Junction, Tennessee?—A. There was a branch line that was originally known as the Ohio Valley road from Evansville, crossing the main line at Princeton, running on to Elizabethtown, or Hopkinsville, I should say, was the southern terminus; then the main line, which this branch crossed at Princeton, runs southwest to Fulton, and then strikes the north and south main line of the Illinois Central and runs south from Fulton to Grand Junction.

Q. Do you remember about when that C. & O. and S. W., running from Princeton, Kentucky, to Fulton, Kentucky, was acquired by the Illinois Central?—A. The Illinois Central took possession of it the 1st of August, 1896, or about that time. That was the time that I went to Louisville as general freight agent of a part of the road and some of the other branches.

Q. And when was the Ohio Valley road acquired by the Illinois Central?—A. That was acquired about a year later, I think exactly a year later, August 1, 1897.

Q. So that by August, 1897, the Illinois Central had its own direct connection between Evansville and Grand Junction?—A. Yes; I might say that prior to the time that the Illinois Central took possession of the Ohio Valley road from Evansville south that it
10472 was in the hands of a receiver, and I was general freight agent for the receiver for some time prior to the date that the Illinois Central took it.

Q. Now, what was the principal competitor of the Illinois Central, that branch of the Illinois Central, on traffic going south from the Ohio River?—A. The Louisville & Nashville Railroad.

Q. And to what points did that road go in the South?—A. The main line runs from Cincinnati down through Louisville and on to New Orleans, or from Mobile and on to New Orleans, a lot of branch lines. They also have a line running from East St. Louis west to Evansville, and then south through Nashville, connecting up with their main line. These are the two principal parts of the road.

Q. So that the principal competitor of the Illinois Central in that region on traffic going south from the Ohio River was the Louisville & Nashville?—A. From Evansville?

Q. Yes, sir.—A. Yes, sir; decidedly so.

Q. And the Illinois Central did not enter into competition with the Southern Railway until you got down to the Grand Junction territory, did it?—A. That is true.

Q. Did the Illinois Central then have any line extending into the southeast, Georgia, and that territory, at that time?—A. No.

Q. So that the principal traffic handled by the Illinois Central during these years was the Mississippi River traffic—traffic in the neighborhood of the Mississippi River points?—A. Yes; the Illinois Central was always known as a Mississippi Valley line; in
10473 fact the trade-mark of the road states that. The trade-mark is the Central Mississippi Valley route.

Q. Did the Louisville & Nashville extend into the southeast in competition with the Southern Railway?—A. Yes, sir; the L. & N. and the Southern were very active competitors in the southeast. The Louisville & Nashville road is the owner of the Nashville, Chattanooga & St. Louis Railroad, which runs down into the southeast—that is, into Atlanta, and there connects with all of the other roads diverging toward the farther southeast.

Q. On shipments originating at Whiting, Indiana, and going south by way of the Evansville gateway, what roads were available for freight that was going to northern Georgia and that general territory via Evansville?—A. The Illinois Central and the Louisville & Nashville.

Q. That is to say, the Louisville & Nashville straight through from Evansville to the Georgia territory and the Illinois Central to Grand Junction, and there connecting with the Southern?—A. Yes.

Q. In connection with your competition with the Louisville & Nashville on traffic going south from Evansville, what disadvantages, if any, was there to the Illinois Central, or would there have been, in its freight rates being known to the Louisville & Nashville, its principal competitor, in connection with that traffic?—A. At that time the railroads were not as strict as I know they are now, nor were the Commission's rules as strict with respect to filing and posting and making public the tariffs which they were using; and as the
10474 two roads were very strong competitors, it was very desirable that the rates charged by one road be kept from the other road—that is, its competitor.

Q. Would there be any object, therefore, in the Illinois Central, in connection with freight which it was handling in competition with the Louisville & Nashville, from Evansville to points south, so billing or waybilling its freight that the rate might not be disclosed to its competitor, the Louisville & Nashville?—A. Yes; that would be a big advantage to the Illinois Central.

Q. If that were done, what kind of billing would that be called?—A. Why, there were several terms—overhead billing, midnight billing.

Mr. KELLOGG. Blind billing.

WITNESS. Blind billing, yes. Thank you, sir.

Mr. KELLOGG. I don't want you to omit that.

Mr. ROSENTHAL. He has given you two new ones—overhead billing and midnight billing.

Q. Well, were there any other designations that come to your mind as an old and experienced freight man?—A. I do not recall any just now. It has been so long since we practiced those things we have kind of got out of the habit.

Q. In those early days, blind billing was quite a common practice, wasn't it, where competitive conditions existed such as existed there between the Illinois Central and the Louisville & Nashville?—A. No; I can not say that it was a very common practice, but it was by no means an exceptional practice. The idea I mean to
10475 convey by that is this, that while the bulk of the freight that was handled would be handled on regular billing, a part of the remainder might be on blind billing at one time and a greater proportion of it at another time.

Q. Well, you have seen and read the letter that has been offered in evidence in this case, written by you. What was your purpose in writing that letter?—A. May I see that letter, Mr. Rosenthal?

(A letter was handed to the witness.)

WITNESS. It has been quite a while since I have seen it (after reading the letter). It is evident to me now that the purpose was to keep other railroads from knowing what rate we were charging on that business.

Q. Was that your then purpose?—A. I should say that it was. I do not know of any other purpose. I say that because, according to the letter itself, the traffic was covered by a tariff. I see reference to a tariff number there.

Q. Was this letter written by you to William Campbell, the general freight agent at Chicago, Illinois, unsolicited by anyone—was it your own suggestion?—A. You mean unsolicited so far as any shipper is concerned?

Q. Yes, sir.—A. Yes; so far as I know that was simply a matter not at the suggestion of any shipper, but simply to keep the Louisville & Nashville, our competitor, from knowing what we were doing. I may add right there that we at that time (meaning the Illinois Central) never did know just what the Louisville & Nashville's rates were on oil into the southeast. It is my recollection that the agreement of the Railroad Association then in existence did not
10476 include oil, likewise coal and coke. There were several commodities that we excluded from the agreement, the Southeast Mississippi Valley Association agreement. Consequently the rates on oil that were charged by the Louisville & Nashville, or the rates they used, were not filed through the association, nor were they issued by the association. Consequently we had no knowledge of them. It was impossible for us, the Illinois Central, to obtain a copy of their oil tariff.

Q. Did the Standard Oil Company, or anyone connected therewith, request you to write this letter or take such action?—A. No, sir; no, sir.

Q. Had you had any prior experience with the Louisville & Nashville, or any knowledge of their practices, that induced you to write this letter and adopt this practice in blind billing?—A. Yes; we had had several experiences with the Louisville & Nashville people, who were well known to bob up at inconvenient times with information and original documents that belonged to somebody else. I believe almost any freight traffic man in the South will be able to make the same statement through different experiences.

Q. Some of their employees must have graduated into the Government service.—A. Or vice versa.

Mr. KELLOGG. I suppose you think that is a very nice remark, Mr. Rosenthal.

Q. Go ahead.—A. I can recall two of such instances where files not belonging to them——

Mr. KELLOGG. Not belonging to whom?

WITNESS. Not belonging to the Louisville & Nashville were
10477 exhibited by them as proof that their competitors were not maintaining freight rates; and when we undertook to handle any business in very strong competition with the Louisville & Nashville we were naturally more than ordinarily particular about not letting them know what we were doing.

Mr. KELLOGG. Is it your intention to prove that the Louisville & Nashville road was cutting rates for the Standard Oil Company on oil, Mr. Rosenthal?

Mr. ROSENTHAL. Well, following the delicious precedent established within the last 30 minutes by learned counsel for the Government, I must decline to be interrogated across the table, particularly concerning a subject-matter that I know very little about, never having been general counsel for a railroad company.

Q. It appears, Mr. Hurlbut, that the Illinois Central southern lines and the Southern Railway had a joint tariff making rates on petroleum from Evansville via Grand Junction into certain portions of the South; that is, into Georgia and that general territory. It also appears that there was an agreed percentage for the division of this through rate established between the Illinois Central and the Southern Railway. I will illustrate that by giving you several points of shipments and the rates in connection therewith; for example, from Evansville to Atlanta the rate was 30 cents, of which the Southern Railway's share from Grand Junction to Atlanta under the division sheet would be about 20 cents, leaving about 13 cents for the Illinois Central's share of the haul from Evansville to Grand Junction. Now, looking at those from the point of view of
10478 an experienced freight traffic man, if the Illinois Central saw fit to make and publish a tariff in conjunction with roads north of the Ohio River, making a 13-cent rate from Whiting to Grand Junction, what is your judgment as to whether that would tend to insure the movement of freight via the Grand Junction gateway into the South, and thus give the Southern Railway, by moving the freight along that route, its percentage share of the traffic?

Mr. KELLOGG. Objected to as immaterial.

A. I don't know that I exactly caught the drift of the question.

An adjournment was here taken until the morning of Friday, October 16, 1908, at 10.30 o'clock.

10479 ROOM 677, FEDERAL BUILDING, CHICAGO, ILL.,
Friday, October 16, 1908, 10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferris, at the above time and place.

Present on behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison. On behalf of the defendants, Mr. Moritz Rosenthal, Mr. John S. Miller, Mr. Chauncey W. Martyn.

W. D. HURLBUT, recalled, and his direct examination resumed, as follows:

By Mr. ROSENTHAL:

Q. I show you Illinois Central I. C. C. No. A1321, being a rate made by the Illinois Central on petroleum from Whiting to Grand Junction. Is there anything on the face of that tariff under the head "waybilling instructions" that enables you to determine whether the freight that moved under that tariff was blind billed or openly billed?

Mr. KELLOGG. That is objected to. The tariff shows for itself.

Q. That tariff is also G. F. D. 4800D.—A. The notation on the tariff covering waybilling instructions is quite positive as meaning that there is no blind billing, but that the freight should be waybilled in the regular manner; that is, showing charges on the waybill.

Q. I call your attention to your letter of February 24, 1898, to Mr. William Campbell, and direct your attention particu-
10480 larly to the second sentence in that letter, to wit: "In view of the circumstances which surround the making and application of the tariff, and with which you are of course entirely familiar, we believe," etc. Will you please tell us just what you meant by that?—A. By that was meant that the rate as shown by the tariff mentioned in that letter was one that from the standpoint of the Illinois Central, likewise of the C. & E. I., road, it was desirable should be concealed from the competitors of those roads.

Q. Now, what do you mean by the circumstances under which the rate was made?—A. The circumstances meant that the rate was made as between the C. & E. I. road and the Illinois Central road without those roads having conferred with their competitors, as was usually the case.

Q. Was it customary during those earlier years, Mr. Hurlbut, for a railway company to take its proportional share of a rate from a junction point beyond without respect to what rate had been paid to the connecting road prior to the time that the freight reached the road taking the proportional share of the tariff?

Mr. KELLOGG. That is objected to as incompetent and immaterial.

A. Yes; it was a frequent custom for one road to accept its division of a through rate irrespective of what had been charged by its connecting road.

Q. And as a freight proposition, considered from the point of view of the revenue of the road so taking its proportional share of the tariff, it would be wholly immaterial, would it not, what
10481 the other road might have charged or collected?

Mr. KELLOGG. That is objected to as incompetent and immaterial.

A. Yes; the road you first allude to ordinarily felt that it had no interest in what its connecting road charged.

Q. During the many years that you have been connected with freight-tariff matters what has been the custom of the railway companies with respect to issuing commodity tariffs making a commodity rate on some particular line of traffic less than the class rate?—A. That was the very universal practice.

Q. And was it not so universal that, as a matter of fact, the commodity tariffs outnumbered the class tariffs?—A. Yes, by far. That has always been the case.

Q. So that the great volume of the traffic of the country, as a matter of fact, is always moved under commodity tariffs rather than under class tariffs?—A. Yes, that is very true.

Q. And that being true, I suppose, Mr. Hurlbut, throughout all these years it has been a usual and customary thing to find a commodity tariff between the same two points making a lower rate than the class tariff between those same two points?—A. Yes. I might say that almost invariably commodity rates are lower than class rates.

Q. How are commodity and how have commodity tariffs ordinarily been issued throughout all these years? I mean, what is the method by which a shipper gets a commodity tariff or a railroad company issues it?—A. A shipper would approach a railroad and explain what the volume of the business was to be, and would also
10482 point out to the railroad the competition that the shipper was obliged to meet in order to place his goods at different markets. The railroads would then ascertain what rates were being made by other roads from the same or other shipping points into the same markets, those rates being applicable on the same line of traffic, and the railroad would then seek to adjust its rates on a basis that would enable the shipper to place his goods delivered in the market on equal terms with that shipper's competitors. After that had been ascertained, as to what the proper rate or rates were, a tariff was issued, either as an amendment to an existing tariff or as an entirely new tariff, irrespective of other tariffs then in effect.

Q. The tariff being issued under such circumstances, to whom would it be sent by the railway company?—A. The railroads were always desirous of keeping their competitors from learning what their rates were, and in cases where commodity tariffs were issued very frequently the tariff would be sent to the Interstate Commerce

Commission, to the agents directly interested, and to the accounting department; and in some cases the shipper would be furnished with a copy of it; but if the railroad considered that there was more than usual necessity for keeping the rate quiet the tariff was not even sent to the shipper, as it was considered by the railroad that the information, if held entirely in their own possession, was safer than to have it distributed outside of its own offices and employees.

Q. You mean safer in so far as the competitive railroads being advised of the rate was concerned?—A. That is so. That is what I mean.

10483 Q. So that it might frequently happen that a commodity tariff would be issued, and the particular shipper who brought about its issue and for whose benefit primarily the tariff was issued, would not even get a copy of that commodity tariff?—A. Yes; that was very frequently the case.

Q. With respect to commodity tariffs covering intrastate points, what was your practice—what was the general railroad practice throughout those years as to the filing of those tariffs with the Interstate Commerce Commission?—A. Up to the time that the Commission issued its orders in 1906, subsequent to the passage of the Hepburn bill, the State tariffs were not sent to the Interstate Commerce Commission.

Mr. KELLOGG. That is objected to on the same ground—that it is incompetent and immaterial.

WITNESS. It might be that a tariff would contain rates applying not only on State traffic, but likewise on interstate traffic. Of course in that event that tariff would be filed with the Commission; but in that case it was filed only because of the tariff containing interstate rates.

Q. You are entirely familiar, are you not, with regard to the custom of applying Chicago rates to points within the Chicago switching district?—A. Yes; I am more or less familiar with that.

Q. What was the practice for many years prior to 1906 in so far as applying Illinois rates that were not filed with the Interstate Commerce Commission to all points in the Chicago switching district, whether within or without the State of Illinois?

10484 Mr. KELLOGG. That is objected to as incompetent and immaterial.

A. It was the practice to apply the Illinois rates, that is, the rates in effect, for example, between Chicago and points in Illinois, between those same Illinois points and all points in the so-called Chicago switching district, subject however to certain minimum rates. That is to say, in some cases a rate in effect between Chicago and an Illinois point would be so low that the railroad felt that it could not afford to apply that rate from some industry in the switching limits and pay some other railroad switching charges or other charges out of the low rate.

Q. So that in connection with that application of Chicago rates to those switching points, with the exception of such extremely low

rates as you have just stated, it was the general practice, as I understand you, prior to 1906, to apply Chicago rates to all of these Chicago switching points?—A. Yes.

Q. Was that application of Chicago rates to these switching points a general practice, even prior to the time when application sheets were issued by the railway companies and filed with the Interstate Commerce Commission?

Mr. KELLOGG. Same objection.

A. Yes; that had been the practice, beginning with the time that these industries were located outside of Chicago.

Q. That is to say, that was the way in which these little industrial towns around Chicago were built up, was it not?—A. Precisely.

They located outside of the city of Chicago, where they could
10485 obtain plenty of room and at reasonable figures for land, as compared with paying higher prices, of course, for property in Chicago, but with the stipulation that they would be given Chicago rates, and that was the universal practice, to give them Chicago rates.

Q. So that the shipper located in these small industrial towns about Chicago, under that practice of applying Chicago rates to those towns, would primarily be concerned in knowing and ascertaining what the Chicago rate was?—A. Yes.

Q. Because knowing that, and having ascertained that, that would give him the rate from his point?—A. Yes, he was interested only in the Chicago rate.

Q. Now, the roads about Chicago first began issuing application sheets applying Chicago rates to these points about when, do you remember?—A. My recollection is they began issuing those in the early part of the 1890's, shortly before I went to Memphis.

Q. And at that time, when the application sheets were first issued, what was the practice with respect to naming upon such application sheets any particular tariffs?

Mr. KELLOGG. That is objected to. The application sheets are the best evidence.

A. When application sheets first came into use, of course they were new to the railroads. They were in effect what might be termed printed instructions to agents, embodying precisely the same information that previously had been given to agents in the shape of written instructions covered by letters or possibly so-called billing orders. The

practice of issuing these application sheets began because the
10486 railroads found that it was necessary for them to have more complete records of their transactions covering rates, both for the benefit of themselves, shippers, and connections, because the number of tariffs that were constantly being issued was on the increase, and they could keep better track of an arrangement if it was shown on a tariff, and that tariff given a regular serial number, than could be done otherwise. Those application sheets, when first issued, were very general in character. They would state, for example, that Chicago rates would apply between certain specified points within the switching limits and say all points in Illinois or Iowa or south of the

Ohio River or west of the Missouri River, without, however, specifying any tariffs that applied locally between Chicago and those different sections.

Q. So one of the great purposes served by the application sheet was to reduce the number of tariffs which it was necessary for a railway company to issue. Having issued a tariff from Chicago, for example, instead of then issuing a separate tariff for each of these little towns around Chicago, the issuing of the one application sheet was all that was then necessary?—A. Precisely. That application sheet was in effect a supplement to each of the large number of tariffs in effect from Chicago, and all of that was covered simply by one sheet being issued.

Q. What was the next change that came about in the form of the application sheet?—A. The next change was to try and make the application sheets more specific, in the same way that the original application sheets were published, as a matter of convenience
10487 as compared with written letters of instructions in effect prior to that time. It was found that by reason of the large number of tariffs in effect (and the tariffs were becoming more numerous and more complicated all the time) it was found necessary for agents to be given more specific reference where they could find rates to and from Chicago than simply to say "Chicago rates will apply." Consequently, the application sheets undertook to specify the principal tariffs that were in effect between Chicago and the territories that were intended to be covered by the Chicago rates from the outlying switching district. I might say that beginning with the original interstate commerce act the railroads found every year, from year to year, a greater necessity for system and concise information that could be readily located not only by themselves, but by their agents and by the shippers, covering all information pertaining to rates. They had started in with the interstate-commerce act with practically no systems whatever as regards publishing, filing, and keeping records of tariffs; but from year to year they saw the necessity of adopting newer methods that would better cover their requirements as well as those of shippers. That has been extended along from year to year until at the present time, as everyone knows, there is a very elaborate system of numbering and recording and filing tariffs.

Q. That is to say, the interstate-commerce act, which was passed in 1887, introduced or made it necessary for the railroads to evolve an entirely new system with respect to the making and publication and distribution, etc., of railroad rates, but the system as it
10488 now is was not instantaneously created, but it has been a matter of evolution throughout these many years?—A. That is true.

Q. And constantly changing from year to year, and different methods being introduced from what had theretofore existed?—A. That is true. That is brought out very clearly I think by the rules that the Interstate Commerce Commission has issued in its circulars.

For a great many years, that is, beginning with the original law, they seemed to take very little interest in those matters; that is, I mean to the extent of having issued any orders or instructions to railroads; but in their latest circular of instructions they go into a great many details. They specify the size of the tariffs and how they should be indexed, and a great many details, showing that they realize the necessity for a very complete, thorough system, that will enable tariffs to be located and rates ascertained as well.

Q. So the matter of making rates and building up tariffs has not been throughout these twenty years by any manner of means an exact science, has it, nor is it yet?—A. No; I think every railroad freight traffic man feels that the proper method of issuing tariffs has not yet arrived, and that some day some one will come along and show us all how to make tariffs.

Q. And throughout this formative period, this evolutionary period, it is true, is it not, Mr. Hurlbut, that there has been a great deal of confusion in connection with these various subject-matters, and a great many differences of opinion with respect to them?—A. Decidedly so. Prior to the time that the interstate law was first
10489 put into effect, the tariffs on a great many roads, including the Illinois Central I know, were not even numbered. They did not bear any numbers even; and there has been a great deal of confusion, and differences of opinion as to proper methods of issuing and filing tariffs. It seems that every good tariff man has his own ideas about it, and it has been very difficult to reconcile those views so as to get around to a uniform system. The Interstate Commission realized that, recognized that, and that was one of the objects that they had in mind in issuing their specific rules covering the issuing of tariffs.

Q. It is true also, is it not, that from 1887 until within the last few years, the Interstate Commerce Commission did not undertake to regulate these various details to any extent whatever?—A. Very little extent. They did stipulate——

Q. ——and accepted the various tariffs which the railway companies of the country sent in for purposes of filing, without any question whatever?—A. They raised some questions at different times about what they thought were matters of some importance, I suppose, but which the railroads did not regard as being very important. For example, they would criticize the size of some tariff, or——

Q. But they did not undertake to issue any general instructions along the lines of their recent instructions?—A. No; oh, no.

Q. Have you any idea, Mr. Hurlbut, of the average number of tariffs filed with the Interstate Commerce Commission annually by all of the railroad companies of the country?—A. I would not
10490 undertake to say how many hundred thousand of them are filed.

Q. Excluding amendments and supplements, I think it has been stated by Mr. Crossland in one of these cases, or Mr. Roberts, that the number is from 100,000 to 150,000 a year of freight tariffs alone. Now what was the next period in the development of the

application sheet in connection with the application of Chicago rates to these common points? You have told us first that there was no application sheet; secondly, that there was then a blanket application sheet without anything more than general instructions, and, thirdly, that the application sheet then undertook to specify certain of the more important tariffs. What was the next development?—A. I do not believe that any material development beyond that has been reached. If it has been, I have never seen an application sheet that would indicate it.

Q. What is the junction point of the Illinois Central with the belt road that runs to Whiting?—A. Riverdale.

Q. There has been some criticism attempted by the Government in this case because of the fact that the C. & E. I. 6¼ cent petroleum tariff to East St. Louis read from Dolton to East St. Louis, with the statement that switching charged from Whiting to Dolton would be absorbed. What was the practice that existed throughout these years with respect to making of tariffs read from junctional points of that kind?

Mr. KELLOGG. Now, that is objected to. The tariffs are the best evidence. Furthermore, there is no evidence that Mr. Hurlbut knows what those practices were without seeing the tariffs, and the testimony is incompetent.

10491 Q. Go ahead, Mr. Hurlbut.—A. The general practice in the office that I had charge of as the head of the tariff department was to issue the instructions in the shape of tariffs and send them to the agents interested and not any other agents. There was always enough work to be done in the shape of issuing and distributing tariffs to parties who were directly interested, without going beyond that and making a lot of unnecessary work, not only for the general office, but a lot of unnecessary work for the agents to keep track of tariffs in which they were in no wise interested.

Q. What do you mean by the agents interested in a given tariff? Just illustrate that, will you please?—A. By agents interested in the tariff I mean both the agent who would bill the traffic from the point where it came on to the road and the agent at the point of destination.

Q. In other words, it was the custom to confine the issuing of those tariffs to the narrowest possible limits, as I understand you?—A. Yes; that is correct.

Q. During many of the twenty years that the interstate commerce law has been in existence have the railway companies had large, complete, and efficient rate forces in their freight-traffic offices?

Mr. KELLOGG. That is objected to as immaterial.

A. My experience has been that there was always trouble—there always has been trouble in obtaining the services of a sufficient number of competent tariff men to handle the business of an office.

10492 Q. What has been your experience with regard to the use of the sum of the locals as opposed to a through rate, if there were a through rate that was higher than the sum of the locals?

Mr. KELLOGG. That is objected to as incompetent and immaterial.

A. Prior to the time that the Hepburn bill took effect, the general practice was to use sums of locals whenever lower rates could be made than were shown in through tariffs.

Q. So that prior to that time, as I understand you, it had been the general custom to use the sums of the locals where that made a rate, even though those local tariffs were not filed with the Interstate Commerce Commission, where that made a rate lower than a through published rate that had been filed with the Interstate Commerce Commission?

Mr. KELLOGG. Same objection.

A. Yes, sir; whether or not tariffs had been filed with any Commissions had no effect on using those local rates in making up combinations?

Q. And it was customary for the roads to do that with all shippers and with all classes of freight, was it not?—A. Yes; whenever a combination of local rates was discovered that would beat the through rate it was used.

Q. That is, the combination was used?—A. Yes.

Q. With respect to a rate, then, between two points in the same State, do I understand that that rate was universally used by railway companies within your practice and experience, regardless of whether such rate had been filed with the Interstate Commerce Commission; not only in connection with shipments between those two
10493 points, but in connection with shipments emanating in another State?

Mr. KELLOGG. Same objection.

A. Yes, sir; as a matter of fact, I have never understood that local State rates were required to be filed with the Interstate Commerce Commission until their rules were issued shortly after the Hepburn bill became effective; consequently, it was regarded as no violation of any law or even of any rules of the Commission, to use a local State rate in the manner that you mention.

Q. The rules of the Commission even now permit a rate to be changed on but one day's notice, do they not, where the sums of the locals are lower than the through rate?—A. Yes, sir.

Q. Via any route?—A. Via any route; yes, as contrasted with the usual requirement of 30 days' notice.

Q. Thus indicating that the Commission itself favors the practice of adopting the rate as shown by the sums of the locals, where lower than the through rate, as shown by their announcement of this rule, permitting the change to be made on simply one day's notice?

Mr. KELLOGG. That is objected to as incompetent. The rule, if there is any such rule, is the best evidence of what the intention of the Commission is.

Mr. ROSENTHAL. I take it the court will take judicial notice, perhaps, of the rules of the Interstate Commerce Commission.

Mr. KELLOGG. Well, if they do, then that judicial notice is the best evidence of what the rule means.

10494 Q. I show you a copy of Chicago and St. Louis Traffic Association Tariff No. 24, I. C. C. No. 3, effective May 15, 1899; also a copy of Illinois Railway and Warehouse Commission's Classification of January 1, 1900, and of July 1, 1895. I likewise show you a copy of petitioner's Exhibit 550, the same being Chicago & Alton Railway Company's Tariff I. C. C. No. 1203, effective June 9, 1903, being what is commonly known as an application sheet; I also call your attention to a copy of petitioner's Exhibit 551, being Chicago & Alton Company's Tariff C. F. D. No. 10525, effective August 15, 1903, and I direct your attention to the fact that this tariff does not appear to have been filed with the Interstate Commerce Commission until December 21, 1905; I also show you copies of petitioner's Exhibits 552 and 553, the same being Chicago & Alton Company's tariffs entitled Special G. F. D. No. A209 and A447, the first being effective January 1, 1903, and the second January 1, 1904; also Chicago & Alton Railway Tariff I. C. C. 981 and Chicago & Alton Tariff I. C. C. 1407, the last two being what are commonly known as application sheets, the first taking effect August 13, 1901, and the second taking effect July 18, 1904. Will you please examine these various documents and state whether from them you could have quoted a lawful rate for the transportation of petroleum and its products in carload lots, during the year 1903 and 1904, from Whiting, Indiana, over the Chicago Terminal Transfer Railroad, to Chappell, Illinois, and from Chappell, Illinois, to East St. Louis, Illinois, over the Chicago & Alton Railroad; and, if so, what would you have quoted as the lawful rate?

Mr. KELLOGG. That is objected to as incompetent. The
10495 tariffs are the best evidence. And also that it calls for the conclusion of the witness.

Q. You may assume that the amendments to Tariff 24 or any of the other tariffs shown you do not affect your consideration of this question.—A. That is what I was looking to see. I would quote a rate of 6 cents per hundred.

Mr. KELLOGG. That is, you assume that those 6-cent rates were not filed with the Commission, do you?

WITNESS. Sir?

Mr. KELLOGG. You assume that the 6-cent rate was not filed with the Commission?

Mr. ROSENTHAL. You may assume, of course, in your consideration of that question that the 6-cent tariff was not filed with the Commission. Whether the rate was filed with the Commission is another question.

WITNESS. I assume, from the fact that these two special G. F. D.'s do not bear I. C. C. numbers, that they were not filed with the Commission.

Mr. KELLOGG. That is all I want to understand.

Q. I again call your attention to petitioner's Exhibit 558, being the Chicago and St. Louis Traffic Association Tariff 24, and to both of the Illinois Railroad and Warehouse Commission's Classifications,

that of 1895 and that of 1900. I also call your attention to a copy of petitioner's Exhibit 569, the same being C. B. & Q. Railroad Company's Tariff I. C. C. 2965, effective May 24, 1901, being what is commonly known as an application sheet. I also call your attention to a copy of petitioner's Exhibit 570, the same being C. B. & Q. I. C. C. 4721, canceling I. C. C. No. 2965, effective December
10496 28, 1903, that also being what is known as an application sheet. I call your attention also to a copy of petitioner's Exhibit 571, that being Amendment 3½ to C. B. & Q. Tariff I. C. C. 4721, effective May 1, 1904, and I direct your attention to the fact that this Amendment 3½ purports to give a list of various tariffs, including Chicago and St. Louis Traffic Association I. C. C. No. 3. I likewise call your attention to a copy of C. B. & Q. Tariff bearing I. C. C. No. 4234, and to Supplement 2 of the same tariff, the supplement being effective by its terms February 8, 1904. And I call your attention to the fact that this tariff, C. B. & Q. I. C. C. No. 4234, is likewise noted on Amendment 3½ of C. B. & Q. I. C. C. 4721. I also call your attention to a copy of petitioner's Exhibit 572, the same being C. B. & Q. G. F. O. No. 33, effective by its terms January 1, 1900, this document appearing not to have been filed with the Interstate Commerce Commission. In addition to these documents, I call your attention to a copy of C. B. & Q. G. F. O. No. 1059, effective by its terms January 1, 1904, and I direct your attention to the fact that this G. F. O. No. 1059 is listed with other tariffs upon Supplement No. 2 to C. B. & Q. I. C. C. 4234, the same tariff to which I have previously called your attention, also not filed with the Interstate Commerce Commission. I also call your attention to C. B. & Q. I. C. C. No. 1247, effective January 10, 1896, and I ask you to assume in your consideration of this question the uncontradicted fact in this case that this was filed with the Interstate Commerce Commission April 4, 1904, and that upon such filing it was given the number 17209, and I direct your attention specifically to the 8th page of
10497 this tariff, which shows No. 288, and to the reference of that number, which refers for rates from Chicago to East St. Louis to special tariff. And I also show you defendants' Exhibit 151. From your examination and consideration of all those documents could you have quoted, and would you have quoted, what you regarded as a lawful rate on petroleum oil and its products in carload lots from Whiting, Indiana, to East St. Louis, in the years 1900 and 1904, and, if so, what would you have so quoted as the lawful rate during those two years?

Mr. KELLOGG. Same objection.

A. Yes, sir; I would have quoted a through rate of 6 cents per hundred in those two years, not for the period between those two years.

Q. The Government in its proof seems to have limited the consideration of the question to those two years, and we have accordingly limited our interrogations to those two particular years on the C. B. & Q.

Mr. KELLOGG. You assume, of course, that those 6-cent billing orders were not filed with the Commission?

WITNESS. Yes, sir; because they do not show I. C. C. numbers.

Q. Mr. Kellogg speaks of those as being 6-cent billing orders. Are they tariffs?—A. They are, according to my understanding. I notice that they bear the same designation as printed tariffs—that is to say, they are termed G. F. O. numbers, same as are printed tariffs which are filed with the Commission bearing I. C. C. numbers.

Q. Petitioner's Exhibits 552 and 553, being what are known as the special billing orders issued by the Chicago & Alton, were those also tariffs?

10498 Mr. KELLOGG. That is objected to. They are the best evidence of what they are.

A. I should term them tariffs. I notice they bear G. F. D. numbers, which, as I understand it, is the designation used regularly by the Alton road on all tariffs, including those printed and filed with the Commission.

Q. Well, there was nothing unusual during all of those years in a railroad company issuing a tariff and entitling it special billing order, was there, or printing it on a typewriter instead of having it regularly printed?

Mr. KELLOGG. Same objection.

A. In my experience a tariff was either designated as one or the other, that is, ordinarily; that is, by one or the other, I mean, as a G. F. D. or a G. F. O. on the one hand, or a billing order on the other. As to issuing those sheets on typewriter instead of having them printed, that was a very ordinary custom and still is.

Q. Please examine tariff of the Pennsylvania Railroad Company, I. C. C. No. 459, purporting to make a rate from Olean, New York, to certain points on the New York Central & Hudson River Railroad, taking effect April 10, 1904, being Government Exhibit 619, and state whether from that tariff you would be able to name a lawful rate from Olean, New York, to Norwood, New York, by way of Rochester, New York, on petroleum and its products, in carloads and less than carloads.

Mr. KELLOGG. That is objected to as incompetent. The tariff is the best evidence. The question also calls for the legal construction of the tariff by the witness.

10499 Mr. MARTYN. I show you in this connection the maps of the New York Central and the Pennsylvania Railroad, as shown in Official Railway Guide, giving the location of the railroads in the vicinty of Olean and Rochester.

Mr. ROSENTHAL. Let me add to that queston: Or must you, in addition to that tariff, have before you the percentage sheets indicated on page 3 of said tariff?

Mr. KELLOGG. Same objection.

A. The tariff shows a rate of 26½ cents, but it does not show that that tariff applies via Rochester or via any other junction.

Q. How would you determine that according to the tariff?—A. It would be necessary for me to have the percentage sheet referred to in the tariff which the tariff mentions specifies the route via which the rate applies.

Q. What is the language of the tariff in that connection, and on what page of the tariff is it found?—A. On the title page of the tariff there is the notation, "Route in accordance with agreed percentages and as designated within."

Q. What does that mean, Mr. Hurlbut?

Mr. KELLOGG. Same objection to all these questions.

A. To "Route in accordance with agreed percentages" means that there are percentage divisions in effect from Olean to the points of destination on the R. W. & O. division of the New York Central road, and that the sheet showing those percentages also shows the route via which the through rate applies, which rate is divided according to the percentages. The other part of the notation on the title page
10500 of the tariff, which states that shipments shall be routed as designated within, alludes, as I understand it, to points that are shown in the tariff other than those on the R. W. & O. division of New York Central, and West Albany. Likewise, on the last page shown on page 3. That page of the tariff shows route via Rochester, New York Central, and West Albany. Likewise, on the last page of the tariff, it shows rates from Olean to certain points in New York, starting off with Grimesville, shows route via Buffalo and the New York Central; but to points on the R. W. & O. division of the New York Central there is no specified route in the tariff; hence one would have to have the percentage sheet alluded to in the tariff in order to find out what the route is.

Q. I show you in connection with that tariff defendants' Exhibit 114A and defendants' Exhibit 114B, the same being respectively percentage sheets of the Western New York & Pennsylvania Railroad No. 221, taking effect November 17, 1892, and of the Pennsylvania Railroad No. 39, effective August 30, 1904. Assuming that the two percentage sheets cover the same branch of the Pennsylvania road, although apparently under different names on these percentage sheets, the fact of their being the same not being controverted in this case, can you now, from an examination of that tariff, in connection with those percentage sheets, make a rate from Olean to Norwood, New York, by way of Rochester, New York?

Mr. KELLOGG. Same objection.

A. No, sir.

10501 Q. Why not?—A. The tariff states that the routing is in accordance with agreed percentages. One of the percentage sheets states that the routing is via Buffalo and Suspension Bridge. The second one, which supersedes the one first mentioned, states that the routing is via East Buffalo.

Q. I notice on the face of defendants' Exhibit 114B, the same being percentage sheet 39 of the Pennsylvania road, the phrase "Route via East Buffalo, New York, or Rochester, New York." What relation

has that to the matter of routing so far as Rochester is concerned, in shipments from Olean to Norwood?

Mr. KELLOGG. Same objection.

A. That indicates that they have two general routes between Pennsylvania Railroad stations and R. W. & O. stations on the New York Central, and that those two general routes that are specified on the title page of the tariff are those—either one or the other of them is used in the individual routing that is specified on the other pages of the percentage sheet as between the specific points.

Q. Then, why does not that percentage sheet make a route from Olean to Norwood by way of Rochester on petroleum?

Mr. KELLOGG. Same objection.

A. Why does it not?

Q. Yes.—A. The percentage sheet No. 39—in fact, both percentage sheets specifically point out Olean as being in a certain group as a shipping point, and specifically point out that Norwood is in a certain group of destinations.

Q. Name those groups.—A. In the case of percentage sheet No. 221, Olean, the shipping point, is specified as being in group E,
10502 and Norwood as destination is specified as being in group No. 5. The routing shown on the title page of the percentage sheet from stations in group No. E to destination shown in group No. 5 is via Western New York & Pennsylvania Railroad, groups via Buffalo and Charlotte. In the case of percentage sheet No. 39 Olean is shown as being in route group No. 8. Norwood is shown as being in route group letter G as destination. On the second page of the percentage sheet the routing from group 8 to group G is shown as being via East Buffalo.

Q. So that under neither of these percentage sheets, taken in connection with that tariff, could the routing from Olean to Norwood be made via Rochester?—A. No, no; very clearly not.

(A recess was here taken until 2 o'clock p. m., at which time the examination of the witness was resumed as follows:)

By Mr. ROSENTHAL:

Q. I show you a copy of petitioner's Exhibit 608, being Pennsylvania Railroad Company's Tariff G. F. D. 114, the same being rate order S1530, dated October 8, 1903, not filed with the Interstate Commerce Commission. I also call your attention to a copy of petitioner's Exhibit 612, the same being New York Central & Hudson River Railroad Company's rate order W. K. 201, not filed with the Interstate Commerce Commission. I also call your attention to petitioner's Exhibit 615, being Central Vermont Railway Company's Tariff, I. C. C. Y5, effective January 6, 1893, canceled by Rutland Railroad I. C. C. 1436, effective December 6, 1905; these three tariffs being the tariffs which name a 9-cent per barrel rate between Olean
and Rochester; 9 cents a hundredweight between Rochester
10503 and Norwood and $23 a car rate between Norwood, New York, and Burlington, Vermont. I call your attention to the two percentage sheets that you had before you just before adjournment,

W. N. Y. & P. R. R. percentage sheet No. 221 and Pennsylvania Railroad percentage sheet No. 39, and also joint through tariff on petroleum and its products of the Pennsylvania Railroad Company, I. C. C. No. 459; the local freight tariff of the Western New York & Pennsylvania Railroad Company I. C. C. No. 161; the Rutland Railroad Tariff, I. C. C. No. 421, effective December 10, 1900, together with two exceptions to the official classification of the Pennsylvania Railroad Company, numbered, respectively, I. C. C. 1977 and I. C. C. 2242. Now assuming that these tariffs or prior or subsequent issues of precisely the same character as these tariffs except as to their numbers, naming the same rates in the same way, were in effect on May 1, 1904, and assuming in your consideration thereof that on that date the Rutland Railroad Company had filed with the Interstate Commerce Commission exceptions to the official classification putting oil in carloads in 3d class; could you at that time have quoted a rate on a shipment of petroleum oil in tank cars, carloads, from Olean to Burlington, over the Pennsylvania Railroad from Olean to Rochester, New York, over the New York Central & Hudson River Railroad from Rochester, New York, to Norwood, New York, and over the Rutland Railroad or the Central Vermont, whichever company was operating the road at the time, from Norwood to Burlington, Vermont; and if so, what would you have quoted as the then lawful rate?

Mr. KELLOGG. Same objection.

A. The question is, as I understood it, could I name a rate;
10504 and if so, what rate?

Q. Yes.—A. I would name a rate, using 9 cents per barrel from Olean to Rochester; 9 cents per 100 pounds from Rochester to Norwood, and $23 per car from Norwood to Burlington.

Q. I show you petitioner's Exhibit 592, the same being a commodity tariff of the Missouri Pacific Railway Company, I. C. C. No. 535, applying on petroleum oil and its products, in carloads, from St. Louis, Missouri, to Alexandria, Louisiana, a rate of 25 cents per 100 pounds. This particular tariff became effective July 16, 1896. Assume in answering this question that it continued effective throughout the years 1903 and 1904. I also show you tariff of the Missouri Pacific Railway Company, I. C. C. No. 1744, the same being a joint freight tariff of the Missouri Pacific and other roads, naming rates from St. Louis, Missouri, Kansas City, Missouri, and divers other points, to Shreveport, Monroe, Alexandria, and Boyce, Louisiana, effective August 10, 1897, it being the tariff marked "Defendant's Exhibit 190 A." Assume in your consideration of this tariff that it also continued effective during the years 1903 and 1904. From a consideration of both of those tariffs, could you quote a rate from St. Louis, Missouri, on petroleum and its products, in carloads, to Alexandria, Louisiana, during the years 1903 and 1904; and if so, what in your opinion would the lawful effective rate have been?

Mr. KELLOGG. Same objection.

A. These tariffs show two different rates; one of 25 cents per hundred and the other one of 30 cents per hundred. I should say
10505 that the rate to be used was the lower one of the two. I will add that I notice that the tariff issued in 1897, while it states on its face that it cancels other tariffs, does not include in that note the cancellation of the single-sheet tariff which was issued in 1896.

Q. And which names the 25-cent rate?—A. And which names the 25-cent rate.

Q. I show you petitioner's Exhibit 596, the same being Tariff I. C. C. 830 of the Missouri Pacific Railway Company, making a rate of 15 cents per 100 pounds from St. Louis, Missouri, to Alexandria, Louisiana, on shipments destined to points in Louisiana on Southern Pacific Railway Company, except certain stations on joint track between Alexandria and Cheneyville, on petroleum and its products in tank cars, together with Government Exhibits 597 and 598, the same being local State tariffs making rates from Alexandria to divers points on Morgan's Louisiana & Texas Railroad & Steamship Company, a branch of the Southern Pacific, of varying rates to those different points. Also a tariff designated as Through Freight Tariff No. 16F, I. C. C. No. 168, a tariff purporting to name through rates from St. Louis to the same points that are indicated upon the two local State tariffs, Government Exhibits 597 and 598; the through rates named in the Through Freight Tariff No. 16F, I. C. C. 168, being higher rates than the combination of the 15-cent rate and the rate made by the local State tariff. You may assume that the supplements do not affect the rates named in the through freight tariff. Please examine those tariffs, and state if you can what the rate would have been during the period of time
10506 covered by the tariffs, between St. Louis, Missouri, and the points named on the local State tariffs, and what you would have quoted, with all those tariffs before you, as the lawful rate between those points, on petroleum and its products, in carloads.

Mr. KELLOGG. Same objection.

A. Do you want me to specify the through rates that I would make to each point of destination?

Q. Yes; or take any one point now as an illustration—any one of the points named on the local tariffs; any one of the points named in Louisiana on the local State tariff.—A. From St. Louis to Crowley, Louisiana, I would quote a through rate of 34 cents per 100 pounds in tank cars, and 40 cents per 100 pounds in box cars.

Q. Now, how do you get at that?—A. The rate of 34 cents per 100 pounds is on the basis of the proportional rate of 15 cents per 100 pounds from St. Louis to Alexandria, plus the local State rate of 19 cents from Alexandria to Crowley on shipments in tank cars, and 25 cents per 100 pounds from Alexandria to Crowley in box cars.

Q. And in your consideration of that question would it make any difference whether those local State tariffs had been filed or not with the Interstate Commerce Commission?

Mr. KELLOGG. Same objection.

A. No, sir; it would not affect my act in quoting a rate, and considering that that rate was available for use locally.

Q. Now, you would quote rates to all of the other points named on those State tariffs in precisely the same way, would you? What I mean to say is, you would apply the same principle?—

10507 A. Yes; I would. I will look up one of these, to see whether or not the same basis would apply. To Lafayette, Louisiana, I would quote a through rate of 33 cents per 100 pounds.

Q. You would get at that how?—A. On a basis of the proportional rate of 15 cents per 100 pounds from St. Louis to Alexandria, adding thereto the local rate of 18 cents per 100 from Alexandria to Lafayette, which latter rate applies on shipments either in tank cars or in box cars.

Q. I show you petitioner's Exhibit 669, the same being a rate of 7½ cents per barrel of 42 gallons on crude petroleum and its products from Redondo, California, to Los Angeles, California, issued by the general freight agent of the Santa Fe road, covering shipments of petroleum over that road between those two points, which tariff was not filed with the Interstate Commerce Commission; also a tariff of the Santa Fe system, I. C. C. No. 1381, referred to by the Government in this case, and direct your attention particularly to page 9 of said tariff, the same purporting to make a rate of 10 cents per barrel of 42 gallons, on petroleum, from Redondo, California, to Los Angeles; also tariff of the Santa Fe system numbered 5821, naming class rates between stations on the Southern California road, being a tariff of the Santa Fe system, said last-named tariff not being filed with the Interstate Commerce Commission. Assuming that said last-named tariff is governed by the western classification, and considering all three of these tariffs as purporting to be effective at the same time, what would you have named as the lawful rate on shipments of petroleum in carload lots between Redondo and Los Angeles,

10508 said shipments being destined to points in Arizona on the Southern Pacific Railway? You may assume that under the western classification petroleum was in the 5th class, in the absence of a special commodity tariff. Assume in your consideration of that question, in addition to what I have stated, that there was no published and filed through rate from Redondo to said points in Arizona.

Mr. KELLOGG. Same objection.

A. These tariffs seem to show four different rates; one a class rate of 25 cents per 100 pounds for a certain length of time; a class rate of 10 cents per 100 pounds; a commodity rate of 10 cents per barrel, and a second commodity rate of 7½ cents per barrel. I would quote the lowest rate of the four.

Q. Assuming that a shipment, then, had been made, for which the railway company had charged the shipper 10 cents, while the 7½-cent tariff was in effect, and a claim had been made by the shipper against the railway company for overcharge, would you, as an expert freight

traffic man, with that claim coming up to you, have allowed it and paid it?

Mr. KELLOGG. Same objection.

A. Why, yes; the authority was in effect for the agent to use 7½ cents as the rate from Redondo to Los Angeles. If through oversight or any other reason he did not use it at the time the shipment was made, I certainly would feel authorized to apply that rate by refunding any overcharge, which would have precisely the same effect as though the shipment had been billed originally at the 7½-cent rate.

10509 Q. I show you a tariff of the Grand Trunk Railway system, with an I. C. C. number A944, naming a rate on petroleum products, in carloads, from Toledo, Ohio, to divers points, marked "Defendants' Exhibit 124A" for identification, effective December 12, 1904. Please examine that tariff and state whether or not it makes a rate from Toledo to Boston, and if so, how much the rate is.

Mr. KELLOGG. Same objection. The tariff is the best evidence of the rate.

A. Yes, sir; the tariff shows a through rate of 27 cents per 100 pounds.

Q. Now, just how is that rate shown, Mr. Hurlbut?—A. The title page or front page of the tariff states that it applies on petroleum products, carloads, in wood or in tanks, from Toledo to Central Freight Association territory and trunk-line teritory points. On the reverse side of the tariff, under the caption "From Toledo, Ohio, to trunk-line teritory," there is shown in the second column, among other destinations, Boston, Massachusetts. Immediately opposite that name is a column headed "Rate in cents per 100 pounds," with the figure "27" opposite the town of Boston.

Q. I show you in connection with that tariff, Tariff No. 9 of the National Despatch-Great Eastern Line, under date of 1903, effective January 1, 1903. Assuming in your consideration of this question that this last-named tariff continued effective during the period that defendants' Exhibit 124A continued effective, this last-named tariff, to wit, National Despatch-Great Eastern Line tariff,

10510 being marked "Defendants' Exhibit 124B" for identification; and directing your attention in your consideration of these tariffs, particularly to the third paragraph on page numbered 1 of said 124B for identification, I ask you whether those two tariffs taken together name a rate on petroleum and its products in carloads, from Toledo, Ohio, to Burlington, Vermont; and if so, what that rate is?

Mr. KELLOGG. That is objected to on the same grounds.

A. I should state that the same rate as to Boston, namely 27 cents per 100 pounds, was the proper rate from Toledo to Burlington.

Q. Now, please tell us how you reach that conclusion.

Mr. KELLOGG. Same objection.

A. The National Despatch-Great Eastern Line, that is the Fast Freight Line Guide Book as there termed, was issued in 1903 (that being defendants' Exhibit 124B for identification); and while that guide book states that the basis shown in the tariff does not apply on petroleum——

Q. Where does it state that?—A. On page 1, the third paragraph.

Q. That is the paragraph that I specifically called your attention to on page numbered 1?—A. Yes.

Q. What is that paragraph?—A. It reads as follows: "Petroleum or its products, whether in tank cars or in packages, must not be taken under the instructions of this guide; but such shipments will be subject to special tariffs and local regulations of railroads interested." Now, while this Fast Freight Line Guide Book contains that stipulation, it also shows that the general basis of rates to Burlington, Vermont, is the same as to Boston.

10511 Q. Where does it show that?—A. On page 26.

Q. Read what it says there that leads you to that conclusion, or show me how you reach that conclusion from your consideration of page 26.—A. From page 21 to page 68, inclusive, in the guide there is shown an alphabetical list of points of destination. The list not only names the specific points, but also names the State in which each one is located, likewise the terminal railroad; also a column of instructions to agents, showing the point to which they are to waybill for each point of destination; also a column showing either the basis of rates that is to apply to each destination, or a reference, which reference elsewhere in the book states what basis of rates is to apply. Likewise there is a column on each page showing the basis of divisions—some reference to divisions. On page 26 Burlington is shown as follows: Under the caption of station, Burlington; State, Vermont; railroad, C. V., meaning the Central Vermont Railroad; waybill to Burlington; rates, Boston. That means that the rates to Burlington, Vermont, are the same as to Boston. Now, while this Fast Freight Line Guide contains the stipulation mentioned before with respect to petroleum, and the tariff was issued in 1903, the later issue of the Grand Trunk Railway system, effective December 12, 1904, makes a party to the tariff the Central Vermont Railway, on which Burlington is located; likewise mentions the National Despatch-Great Eastern Line, which is the line that issued the guide book, and it states specifically, as already mentioned, that the rate from Toledo to Boston is 27 cents.

Mr. MILLER. On that particular commodity.

10512 WITNESS. On that particular commodity, yes sir; and being a later issue, I——

Q. That is a special commodity tariff?—A. A Grand Trunk Railway system special commodity tariff. Being a later issue than the issue of the National Despatch-Great Eastern Line, I should say that the Grand Trunk tariff supersedes the former, so far as there may be any conflict between the two.

Q. In the same manner would the Boston rate apply, speaking now of the rate on petroleum, to all points named on the Central Vermont road in the National Despatch-Great Eastern Line Shippers' and Agents' Guide No. 9 as taking Boston rates?—A. Yes, sir; that is to say, if there are any other points in this tariff that take the Boston basis in the same way that I have mentioned with respect to Burlington, I should say that the Boston rates apply to those other points.

Mr. ROSENTHAL. I now offer in evidence defendants' exhibits for identification 124A and 124B, and ask that they be marked defendants' Exhibits 124A and 124B.

Mr. KELLOGG. Do you want the whole thing in the record?

Mr. ROSENTHAL. I want all of 124A in.

Mr. KELLOGG. That is already in.

Mr. ROSENTHAL. And so much of 124B as is in relation to this subject-matter.

Mr. KELLOGG. How is anybody going to determine it, who is going to determine it, and when is it going to be determined?

Mr. ROSENTHAL. It will all have to go in for the time being, until we can get together and determine it.

Mr. KELLOGG. But the trouble is, Mr. Rosenthal, you never
10513 get together and determine. You put this in, and then that stops.

Mr. ROSENTHAL. Well, I know, but I do not want to stop now and spend a couple of hours with you in determining which of these we will exclude, or what portions of this we will exclude and what portions we will put in.

Mr. KELLOGG. They are objected to as immaterial.

Q. I show you B. & O. Railroad Joint Freight Tariff, I. C. C. No. 4538, being a tariff effective February 1, 1904, together with the eastbound billing instruction No. 15, via the Erie Railroad Company and connections of the Erie Despatch I. C. C. No. 2, and ask you whether from a consideration of those documents you can name a lawful rate on petroleum and its products in carloads from Cleveland, Ohio, to Arlington, Massachusetts, for the time covered by those two tariffs.

Mr. KELLOGG. Same objection.

A. The rate shown in the original tariff—that is, independent of the supplements—in connection with the Erie Despatch Fast Freight Line Book from Cleveland to Arlington, Massachusetts, is 24 cents per 100 pounds, being the all-rail rate to Boston.

Cross-examination by Mr. KELLOGG:

Q. What is your business now?—A. I am traffic manager for the Wisconsin pulp and paper manufacturers, about thirty in number with their mills located in the State of Wisconsin.

Q. Thirty mills?—A. About thirty companies.

Q. About thirty companies?—A. I think they have about forty mills between them.

10514 Q. Previous to your being the traffic manager for these companies, you were in what position?—A. Immediately

previous to that I was general freight agent for the Missouri Pacific and Iron Mountain railroads in St. Louis.

Q. Weren't you the general traffic manager of the General Paper Company?—A. Prior to the time that I went to St. Louis with the Missouri Pacific I was traffic manager for the General Paper Company.

Q. The General Paper Company was the company that was held by the court to be illegal, wasn't it?

Mr. MILLER. I object to that as irrelevant and immaterial.

A. I could not tell you. All I know is, they dissolved business and we were all out of jobs.

Q. They dissolved after they were held illegal by the Supreme Court of the United States, didn't they?

Mr. MILLER. All this same line of testimony is objected to for the same reason.

A. I have never seen the decree.

Q. You have heard of it, haven't you?—A. Oh, yes; I have heard of it. I heard that we were out of business.

Q. Put out of business by the court?—A. I don't know. I understood it was by agreement.

Q. By agreement?—A. I think so.

Q. You knew they were fighting for a number of years, didn't you?—A. No; I did not. I was not with them for a very great length of time; but I knew the fight was on when I came with them.

10515 Q. That was commonly known as the paper trust, wasn't it?—A. By some people—by some few people.

Q. And the court entered a decree declaring it a trust, and that it was illegal, and enjoining it from continuing, didn't it?—A. I could not say that, Mr. Kellogg. I never have seen the decree, or——

Q. Shortly after the decree they went out of business pretty quick, didn't they?

Mr. ROSENTHAL. He said he never saw the decree and does not know that there was a decree.

Q. Well, since the dissolution of the paper trust you went to work for the Missouri Pacific road, did you?—A. Not immediately after the General Paper Company discontinued doing business; no. I was connected with the paper mills for a few months, and was also engaged in winding up some of the affairs of the General Paper Company.

Q. When did you go back to the paper mills in Wisconsin?—A. A year ago March. I believe I stated yesterday in 1906, but it was March 1, 1907. The General Paper Company was still in existence on March 1, 1906.

Q. Generally speaking, Boston takes a lower rate on petroleum than the interior towns in New England, doesn't it?—A. I could not say that.

Q. You are not familiar with the rates?—A. I am not familiar with the rates on petroleum in that section.

Q. Now, referring to this National Despatch-Great Eastern Line, which is defendants' Exhibit 124B, and the joint freight
10516 tariff on petroleum of the Grand Trunk, 124A, you say that the 124A having been issued after the National Despatch Billing Book, it would make the Boston rate apply to Burlington?

Mr. ROSENTHAL. That is not what he said.

Q. Is that your statement?—A. In effect that is; yes.

Q. So that if 124A had been issued before—in other words, if the billing book had been issued afterward—then the clause therein excluding petroleum would be the last issue and the 24-cent rate or 27-cent rate would not apply to Burlington?—A. Well, I would not state that positively; no.

Mr. ROSENTHAL. I submit that——

Mr. KELLOGG. Now, wait a minute. Let the witness answer, please.

Mr. ROSENTHAL. I am going to let him answer——

Q. What is your explanation of that?

Mr. ROSENTHAL. I submit that the witness ought not to be called upon to answer without the tariffs being shown him.

Mr. KELLOGG. He has got them before him.

Mr. ROSENTHAL. I mean the other tariffs that you are referring to.

Mr. KELLOGG. And he has just been examining them. I have referred to no others except those two.

Mr. ROSENTHAL. Oh, yes; you have.

Q. What is your answer?—A. I believe you did refer to some other tariffs, did you not?

Q. No; 124A and 124B.

Mr. ROSENTHAL. Read the question.

10517 WITNESS. You referred to tariffs that were in effect or issued afterward.

Mr. KELLOGG. Oh, no.

Q. You said, as I understood you, that the 124A, being the last issue——A. This tariff.

Q. This tariff that you have before you, being the last issue of the Grand Trunk Railway, it superseded the clause in the 124B, which excluded petroleum, and therefore made the Boston rate apply to Burlington. Now, that is in effect what you stated, isn't it?—A. I believe so; yes.

Q. Yes, sir.—A. Yes.

Q. So I say, had the Grand Trunk Billing Book or the Great Eastern Billing Book 124B been issued after 124A, then the clause therein excluding petroleum would have been the last issue, and the Boston rate would not have applied. That is the other side of it, isn't it?—A. If that had happened—of course, we don't know anything about that.

Q. No; but if that had happened?—A. If that had happened, in all probability the Grand Trunk people would immediately have reissued this tariff, or issued a supplement to it, stating in effect, if they wished to exclude petroleum, that the tariff would not apply

to certain points; that is Boston & Maine points, I believe, as mentioned in here.

Q. But suppose they had issued that book exactly as it is and issued it after Tariff 124A?

Mr. ROSENTHAL. Then they would not have referred——

Mr. KELLOGG. Wait a minute.

Mr. ROSENTHAL. Wait a moment. That is not possible.

10518 How could they have issued No. 9 after this Tariff 124A, when 124A by its terms relates to No. 9 and specifies No. 9 as one of the tariffs that is to be used in connection with it?

Mr. KELLOGG. But it does not specify. It just simply specifies the Great Eastern Billing Book.

Mr. ROSENTHAL. Certainly.

Mr. KELLOGG. Not by number. Suppose this billing book had been reissued with that clause in it, just as it is. It does not even specify the book at all. Look and see if it does.

A. Well, the transaction would not necessarily have been completed then. The Grand Trunk people then would be in the attitude of having a tariff in existence that conflicted with this. Now, if the Grand Trunk had such a tariff, and said that that tariff included Boston, just as it stands, and they accepted a shipment, it seems to me that they would be legally responsible for the protection of the rates shown in the tariff, which had not been properly amended——

Q. But you have not answered my question.—A. And they would have to fight it out between their connections.

Q. Suppose they had reissued that billing book——A. I understood that.

Q. With that clause in it later than this tariff?—A. Precisely, the new tariff being still unmodified, you mean?

Q. No; just answer the question.

Mr. ROSENTHAL. Yes.

Q. Why, yes; that tariff standing as it is.—A. Yes.

10519 Q. And had reissued that billing book?—A. Yes, sir.

Q. With that clause in it, that would have superseded the tariff, would it?—A. Not necessarily. If that tariff remained in effect unmodified by anything that might have been in that tariff, the Grand Trunk Railway would have been responsible for the protection of whatever that tariff showed.

Q. I have not asked you that question. I asked you if the billing book—you said that this tariff 124, being the last issue, would control, didn't you?—A. I said that this tariff superseded that tarif wherever the two came in conflict.

Q. Very well. It is because it is the last issue, isn't it?—A. That is one reason why it is, yes.

Q. Is there any other reason?—A. Yes. Another reason is that that is issued by a railroad, a common carrier, and *that* is not a common carrier.

Q. Who issued the National Despatch book?—A. The National Despatch-Great Eastern Line is not a common carrier. It is not a railroad company.

Q. It is issued by the Grand Trunk Railway, isn't it?—A. Where does it show?

Q. Isn't it issued by the Grand Trunk Railway?—A. Where does it show?

Q. I ask you if it is issued by the Grand Trunk Railway
10520 Company?—A. I have not examined it, but I don't believe it is.

Q. Look and see.—A. It seems to be issued by the manager of the National Despatch-Great Eastern Line.

Q. Whom is it issued by?—A. By C. A. Hayes, manager.

Q. Who was C. A. Hayes?—A. Manager of the National Despatch-Great Eastern Line.

Q. Who was C. A. Hayes, president of the Grand Trunk?—A. No.

Q. Who was he?—A. As far as I know, he was manager of this line. I know that later he was assistant general freight agent of the Grand Trunk in Chicago, and now he is general freight agent.

Q. Now, that was not issued by the Grand Trunk Railway, was it?—A. I should say not, by examining it.

Q. You should say not?—A. I should say not.

Q. Then, the witnesses that have testified that that was issued by the Grand Trunk don't know what they are about?—A. I don't know anything about that.

Q. All right.—A. But it is a Great Eastern Line issue.

10521 Q. Now, will you tell me where in 124 that tariff refers to this National Despatch-Great Eastern Line book, this particular No. 9 book?—A. I have not said that it did refer to that particular No. 9 book.

Q. You have not?—A. No; I do not recall that I have referred to that particular No. 9 book.

Q. Then, you don't know that it does refer to it?—A. I don't know that it refers to that particular No. 9 book, but it refers to whatever Great Eastern Line book was in effect at the time the tariff was in effect—the latest issue of that.

Q. Read the language by which it refers to the National Despatch-Great Eastern Line book. Read the whole of it.—A. It goes on to say Grand Trunk Railway System, etc., in connection with certain specified railroads and connections as specified in the following agents' guides and billing lists, and among others it mentions the National Despatch-Great Eastern Line.

Q. That is the only way it refers to it? This biling book names rates to a large number of places in New England, does it not?—A. I imagine it does. Yes, quite a large number.

Q. And covers many classes of products, doesn't it?—A. Yes, I should say it covers everything.

Q. Then, standing by itself, this book excludes petroleum, does it not, on its face?—A. Yes, standing by itself it does.

Q. Very well.—A. But standing by itself it does not mean anything to a shipper, because there are no rates in that tariff;
10522 there is not a rate shown in it. It is not a tariff as a matter of fact.

Q. Now, the purpose of that book is to show that rates named in other tariffs on various products—steel, iron, and other products and classes—which apply to Boston, apply to certain other places named in that book; isn't that true?—A. That is the theory of this; yes.

Q. And in so applying those other tariffs it excludes on its face petroleum, does it not?—A. It excludes on its face petroleum; yes—on its face.

Q. That means that if there was at that time a tariff on petroleum to Boston that book would not include it, would it?—A. No; not necessarily.

Q. In other words, if there was a tariff in existence, at the time that book was made, on petroleum to Boston, it would not be included in that book because of that class; isn't that true?—A. No.

Q. Why not?—A. No; not necessarily; certainly not.

Q. Well, now, let us see.

Mr. ROSENTHAL. Let him answer.

WITNESS. This simply shows a basis of rates. It shows no rates.

Q. Certainly.—A. Now, if a railroad comes along and issues a tariff showing rates to the basing points, why, the rates shown in this guidebook will apply. That is all there is to it.

Q. Now, let me illustrate. Suppose there were a dozen tariffs in existence at that time naming rates to Boston on various other articles than petroleum, and there was also a tariff in existence
10523 at that time naming rates to Boston on petroleum—just to Boston—this billing book would apply to all those tariff except petroleum, and that would be excluded because of that clause; isn't that true?

Mr. ROSENTHAL. I object to that, because the question does not comprehend all of the points necessary to enable the witness to intelligently and properly answer it. He must, necessarily, have the petroleum tariff before him, so that he may have all of the terms of that petroleum tariff in his consideration of his answer to that question.

Q. Now, please answer the question.—A. Let me have that tariff, will you?

Q. I am not talking about that tariff at all.—A. But I am going to take that tariff in connection with this.

Q. I am not talking about this other tariff at all.—A. This is not a tariff, in the first place. Now, if any railroad issues a tariff on petroleum oil and mentions that the rates in that tariff are to be applied in connection with this fast freight line guidebook, or any other fast freight line guidebook, and if there is anything in that fast freight line guidebook that might lead anyone to believe that certain rates would not apply to certain points, the railroad would properly make

a notation of that in the tariff that it issues, that is to be used in connection with the guidebook.

Q. That is not the question I asked you at all.—A. Well, I am explaining to you.

Q. I haven't asked any explanation of that kind. Now, will you please answer my question?

Mr. ROSENTHAL. Just wait a moment.

10524 Mr. KELLOGG. I shall not wait a moment. I want him to answer by question.

Mr. ROSENTHAL. I insist that the witness has answered the question. And I want to say to you now, Mr. Hurlbut, that unless the examining counsel gives you an opportunity to finish any answer that you are making, you are not under the slightest obligation to pay the slightest attention to anything that he may ask you until you do have that opportunity, and don't permit him to hurry you at all.

Mr. KELLOGG. Please read the question.

(The reporter then read all of that portion of the record beginning with the question, "Now, let me illustrate.")

Q. Now, will you please answer the question I asked you?—A. I have answered it as far as I am able to see.

Q. Suppose when this guidebook was issued there were various tariffs in force to Boston on iron, steel, and various other products. Would this apply the Boston rates to the other towns named herein taking Boston rates?—A. On iron, steel, etc.?

Q. Yes, sir.—A. I should say yes.

Q. You would say it would?—A. Yes.

Q. Now, suppose at that same time there was a tariff in force, when this was issued, simply naming rates from Toledo to Boston, and said nothing about any other rates, but just a rate from Toledo to Boston of 27 cents a hundred; would this billing book extend that tariff to other towns?

Mr. ROSENTHAL. I object to that upon the ground that that is a hypothetical question not based upon any of the facts in this

10525 case, the facts in this case being that the petroleum tariff issued in terms specifically refers to the Despatch billing book for a list of stations, which is not a hypothesis included within your question.

Q. Answer the question.—A. Your question, as I understand it, refers to a tariff showing simply one rate on one commodity.

Mr. ROSENTHAL. I don't think it is fair for the examiner to stand over the witness as he is now doing——

Mr. KELLOGG. Go ahead and answer the question.

Mr. ROSENTHAL.——within six inches of him.

The EXAMINER. I did not hear your remark.

Mr. ROSENTHAL. I say I do not think it is fair for the cross-examining counsel to stand within six or eight inches of the witness and half the time shaking his fist in the witness' face.

Mr. KELLOGG. I haven't done anything of the kind.

The EXAMINER. That is hardly a fair statement for the record to show, Mr. Rosenthal.

Mr. ROSENTHAL. It is fair for the record to show that, without the slightest occasion for so doing, counsel is standing almost on top of the witness.

Mr. KELLOGG. I submit to the witness whether I have done anything of the kind, whether I have shook my fist in his face.

Mr. ROSENTHAL. Well, you are shaking your glasses. I will modify my statement to that extent.

Mr. KELLOGG. Well, you had better, before you make remarks hereafter.

The EXAMINER. I have not seen counsel shake his fist in
10526 the witness' face.

Mr. KELLOGG. It is impossible for me not to be near the witness when I hand him a tariff that he is testifying about.

The EXAMINER. I don't think there is any cause for criticism. If the witness is embarrassed he may ask the counsel to stand farther back.

Mr. ROSENTHAL. But a witness, may it please the examiner, does not always know his rights in that regard, and I am now calling his attention to the situation; and I am also here, among other things, for the purpose of protecting the witness in his rights by making the necessary objection.

Q. Now please answer the question.—A. I would have to see the tariff to which you refer, Mr. Kellogg.

Mr. ROSENTHAL. Pardon me just one moment. Not only does the cross-examining counsel stand in this close relationship to the witness, but Mr. Durand and frequently Mr. Schindler and the rest of the Government cohorts are at his elbow.

The EXAMINER. Now, Mr. Rosenthal, I think that is hardly a fair statement to go into the record. In the course of an examination of this kind counsel on both sides have found it necessary, and properly so, to stand immediately beside the witness and in front of him, calling his attention to various documents.

Mr. ROSENTHAL. I have no objection to that being done wherever his attention is being called to a document, but I object to the cross-examiner doing it when he is not specifically calling his attention to
a document. We have all taken great liberties of course in
10527 being around the witness when we are pointing out documentary evidence, and there is not the slightest objection to that, nor to Mr. Durand nor Mr. Schindler doing that, and I have permitted them to sit one on each side of the witness and one standing by the witness here for days while we were examining documents. That is not the basis of this objection and that is not the character of conduct that counsel is now assuming.

The EXAMINER. Well, go ahead.

Mr. KELLOGG. I submit I have not stood any nearer the witness than was necessary to hand him documents and look at them, and I am not doing so now.

Q. Now will you please answer the question?—A. Yes. Your question, Mr. Kellogg, could hardly be answered fairly and understandingly. You say a tariff applying from one point, Toledo, to one destination, Boston, on one commodity—oil.

Q. Yes, sir.—A. Now one would have to know, or see, rather, what road issued the tariff, what roads are parties to the tariff, whether or not any fast freight lines are parties to that tariff, before one could answer as to whether or not that tariff could properly be applied in connection with a fast freight line guidebook.

Q. You stated that if tariffs were in existence to Boston on iron, steel, and various other products, that billing book would make them applicable to certain other towns, didn't you?—A. In case the tariffs referred to the billing books, of course.

Q. Well, suppose the tariffs had been issued before and did not specifically refer to the billing books—that billing book is for
10528 the purpose of making them applicable to Boston or to these other towns, isn't it?—A. If the tariff did not specifically refer to the billing book, the fast freight line guides, then the rates could not legally be used to other points, to points in the guide not shown on the tariff.

Q. Well, suppose they simply referred to the book, and suppose the rate on petroleum simply referred to the book, do you say the petroleum rate, if issued before that book, would apply to all those towns?—A. I say this: That if the tariff refers to the fast freight line billing book and the tariff applies on the one item, petroleum, as in that case, that whatever basing rates are shown in the tariff are legally and properly applicable to the other points that are in the guidebook and which take the basing point rates according to the guidebook.

Q. Whether it was issued before or after the book? Whether the tariff was issued before or after the billing book?—A. If they are both in effect.

Q. It doesn't make any difference?—A. If they are the last issues and they are both in effect.

Q. Then, what did you mean by saying that this oil rate applied to Burlington because this tariff 124–A was issued after the billing book and superseded that clause?—A. I would like to have my answer in that connection read.

Q. You have no explanation to make beyond that?

Mr. ROSENTHAL. Oh, yes.

A. I am not certain that you have stated my answer just exactly as I have put it.

Q. You have forgotten what the reason was, have you?—
10529 A. Oh, no; oh, no.

Mr. MILLER. Let him hear his answer and then he will reply to your question.

Q. Doesn't this 124–A make rates on petroleum to various other places?—A. Than Boston?

Q. Yes, sir.—A. Yes.

Q. Are there any other billing books besides this billing book which would extend those rates to other places?—A. The tariff refers to Commercial Express Line and several other lines besides the National Despatch-Great Eastern, yes. That is shown on the face of the tariff.

Q. Now, in order to make a rate to Burlington you have to take the National Despatch-Great Eastern book in connection with that tariff, do you?—A. Well, I don't know that I do. I don't know that Burlington is mentioned, only in that particular fast freight line book. It may be in several other fast freight line books which have not been submitted to me.

Q. How do you make the rate to Burlington?—A. How would I make a rate to Burlington?

Q. How do you make the rate to Burlington that you testified about?—A. I take this tariff which shows the rate to Boston; I take the guidebook and see what it says under Burlington, and put the two together.

Q. So you use the tariff and the billing book together?—A. Certainly; to get a rate to Burlington via that line.

Mr. ROSENTHAL. Via the Great Eastern.

WITNESS. Via the National Despatch-Great Eastern Line.

Q. This clause which you read does not apply, you say,
10530 because the specific tariff cuts it out; is that correct?—A. That is one thing that I said, yes; that is not all I said, though.

Q. It isn't?—A. No.

Q. What was the object of putting that clause in the billing book excluding petroleum?—A. I am sure I don't know. I didn't get it up myself.

Q. You don't know what the object was?—A. Wait until I read it again. I don't know exactly. I can make a guess at it if you would like to have that.

Q. Go ahead.—A. Possibly the National Despatch-Great Eastern Line people preferred not to handle petroleum oil via all routes at what were understood to be the current rates, but were willing that certain railroads comprising their line should issue tariffs providing for the application of rates over the National Despatch-Great Eastern Line, because in those cases there would be no objection on the part of the fast freight line to that being done. This also occurs to me in that connection: They might be entirely willing, for example, for the Grand Trunk road, as this tariff seems to indicate, to issue rates from Toledo into Boston, but they might not be willing for other roads to issue rates from some other points into New England. And, according to the guidebook, no matter what point the rates applied from, the basis shown in the guidebook applies regardless of the point of origin.

Q. Has the National Despatch-Great Eastern Line got any cars?—A. I don't know. I don't believe it owns any cars.

Q. Did it ever transport a pound of oil?—A. I could not
10531 say as to that.

Q. Did you ever know of one of those despatch lines transporting any oil or anything else?—A. Carrying oil?

Q. Yes. It is not a transporting company, is it?—A. No.

Q. It is merely a guide for shipping, isn't it?—A. Yes.

Q. Taken in connection with tariffs?—A. Some of them own their own cars; not all of them; very few of them.

Q. You never heard of this one, did you?—A. No; I never heard of any of them having any locomotives.

Q. You never heard of the National Despatch-Great Eastern Line having any cars, did you?—A. I have seen cars marked with their name, but I do not believe they own them. I believe they are owned by the railroads that comprise the line.

Q. It is merely a billing instruction, isn't it?—A. Well, it is, and it is more than that, too.

Q. How much more?—A. It is a combination of railroads that appoints representatives to solicit freight for the benefit of the railroads forming the line; that is, the railroads get together and form a line. They figure that to have one man representing them, with a few agents, is less expensive than for each individual line to have a lot of representatives.

Q. How many lines are parties to that book?—A. This book [pointing to book in front of witness]?

Q. Yes.—A. On the inside of the cover it shows to be, I should say, about 80.

Q. Now, when was it that the Illinois Central road opened
10532 its line from Evansville, Indiana, to Grand Junction?—A. It took possession of the Ohio Valley road about the 1st of August, 1897. It took possession of the line from Princeton to Fulton, Kentucky, about August 1, 1896. Its possession of the line from Fulton to Grand Junction runs away back of the time that I ever had anything to do with the railroad.

Q. But the Illinois Central has a direct line from Chicago to Grand Junction?—A. Yes.

Q. All the way?—A. All the way.

Q. By way of Cairo?—A. Yes, sir.

Q. Without running over the rails of any other company?—A. Yes, sir.

Q. Effective February 11, 1896, the Illinois Central road published a tariff——A. Yes, sir.

Q. ——or filed a tariff with the Commission, making a 13-cent rate from Dolton, is it?—A. Whiting.

Q. From Whiting, Indiana, to Grand Junction, Tennessee?—A. Yes, sir.

Q. That is true, isn't it?—A. Yes.

Q. And that tariff was in force—that of reissues of that tariff—until February 25, 1898, wasn't it?—A. I don't know. Let me see it, please.

Q. Look them over.—A. According to these tariffs the rate expired February 25, 1898.

Q. It was never reissued, was it, Mr. Hurlbut?—A. I could not say; I have no knowledge.

Q. Were you with the road at that time?—A. 1898?

Q. Yes.—A. Yes, sir. But I had at that time no control
10533 over the traffic out of Chicago or Chicago territory, which included Whiting, into the South. My jurisdiction was south of the Ohio River.

Q. Then you don't know anything about how those shipments of oil under that tariff were billed at all, do you?—A. Oh, I know something about it, just in a general way. I know that the traffic was moved, and I know that there had been other business moved through Riverdale, but I do not have any specific knowledge about this particular traffic, as to how it was billed.

Q. That tariff expired on the 25th of February, 1898, and in September, 1897, the Chicago & Eastern Illinois, the Evansville & Terre Haute, and the Illinois Central railroads issued a tariff of 13 cents per hundred, which was reissued February 3, 1898, from Dolton to Grand Junction, Tennessee. I show you the one of February 3, 1898. Now, you were familiar with the circumstances leading up to the issuing of that tariff, were you?—A. I know something about it, yes.

Q. And why it was made and why the oil was blind billed? Is that true?—A. I know something about it, yes.

Q. You stated this morning, I believe, the reasons why the oil was blind billed.—A. Yes.

Mr. ROSENTHAL. He stated why he requested that it should be blind billed, Mr. Kellogg.

Q. Will you tell me why the Illinois Central gave up the traffic from Whiting, Indiana, to Grand Junction, where it had the entire haul and got the entire rate, and accepted a proportion of the rate
with two other roads, its proportion of the haul being from
10534 Evansville to Grand Junction?—A. It gave it up because it could not help itself. The Illinois Central did not have the traffic. It was somebody else' traffic. The shipper wanted to move the traffic via a different route than that which it had been moving. The Illinois Central consented to take a part of the revenue and get a partial haul of the traffic rather than lose it entirely. If the Illinois Central had not agreed to join in the 13-cent rate via Evansville and Grand Junction in connection with the E. & T. H. and the C. & E. I. roads the business could have been given over to the Louisville & Nashville Railroad at Evansville, and the Illinois Central would not have gotten anything out of it. Just simply the theory that half a loaf is better than none.

Q. It was done because the Standard Oil Company insisted on doing it, was it?—A. I take that for granted, that the Standard Oil Company, or whoever the shippers were, presumably the Standard Oil Company, preferred to turn the business the other way.

Q. You certainly would not have taken out the 13-cent rate and quit hauling the oil all the way unless the shipper had compelled you to do it, would you?—A. Well, I know this—that the Illinois Central

never was looking for very much of a fight with such big shippers as the Standard Oil Company.

Q. That is what I supposed. You have no doubt that it was at the request of the Standard Oil Company that that change was made and you accepted a proportion of the 13-cent rate from Evansville instead of having the whole haul, have you?—A. Without any definite recollection on that point, I should say that that is a very reasonable conclusion.

10535 Q. Now, so far as you know, the oil had not been blind billed from Whiting to Grand Junction before you put in the new tariff and commenced to take it in connection with the Evansville & Terre Haute and the C. & E. I.?—A. So far as I know, it was not, and the tariff contains no instruction in that regard.

Q. Now, why was it any more necessary to blind bill the oil when it was shipped over the C. & E. I., the Evansville & Terre Haute, and your line to Grand Junction than it was to blind bill it when it was shipped over your road alone, the rates being the same?—A. The reason was that the L. & N. road got into Evansville as did the Illinois Central, and the L. & N. road did not get into Cairo or Grand Junction when the shipments moved direct from Riverdale to Grand Junction over the Illinois Central. There was another reason. There had always been very close relations existing between the Evansville & Terre Haute Railroad, north of Evansville, and the Louisville & Nashville. The Evansville & Terre Haute Railroad was under considerable obligation to the L. & N. road for the large amount of northbound traffic that was given to it by the L. & N., and the E. & T. H. road therefore felt that they had to be very careful as to anything they did with the Illinois Central that might offend the Louisville & Nashville. Now, you take that fact in conjunction with the pretty well-known fact that the Louisville & Nashville road had means of ascertaining what their competitors were doing, and it made it necessary to take extra precautions to prevent them from knowing what rate was being charged.

Q. If there was danger of the Evansville & Terre Haute giving it away to the Louisville & Nashville, there was just
10536 as much danger when it was blind billed as when it was not blind billed, wasn't there?—A. Not necessarily, no; oh, no. It was not a question of the Evansville & Terre Haute giving away any information to the Louisville & Nashville; that was not the point. The point was this—that the Louisville & Nashville Railroad had its headquarters, or one of its headquarters, you might term it, in Evansville, as they have a general freight agent there and they have a large force of men there. Now, they could obtain information more readily in a town like Evansville where the men were than they could some other place where they were not located.

Q. Well, it was just as much an object for your company to conceal the 13-cent rate from Whiting to Grand Junction as it was from Whiting by way of Evansville to Grand Junction,

wasn't it?—A. Yes. I will say right now that I have no information about the blind billing, whether there was blind billing or other kinds of special billing by the Illinois Central direct to Grand Junction. I told you that I had no information on that point.

Mr. ROSENTHAL. That is, before the rate via Evansville was put in?

WITNESS. Before the 13-cent rate was made applicable via Evansville.

Q. But you stated this morning, as I recall (and if I am in error you will correct me), that the clause in this tariff which provided "Allow the C. T. R. R. $3 per car, regardless of weight, from Whiting, Indiana, to Riverdale, and waybill from Riverdale to destination at remainder of rate," was evidence to you that it
10537 was waybilled at the rate.—A. It indicated that, yes. Now, let me see that. This was the last tariff, wasn't it? Yes, I did state that. There is no doubt about it.

Q. Now, this letter says: "In view of the circumstances which surround the making and application of the tariff, and with which you are of course entirely familiar, we believe that it would be advisable to arrange to have the shipments waybilled through prepaid, which means not to show any rates or divisions of the same, and have settlements as between your road and the E. & T. H. and our line made through the accounting department." "The circumstances surrounding the making of the rate" were what?—A. As I explained this morning, I believe.

Q. Well, please explain it again.—A. The whole conditions were that the Illinois Central and the C. & E. I. did not care to have other roads know what rate they were making.

Q. On oil?—A. On oil.

Q. Because the L. & N. was a competitor, is that the reason?—A. That is one reason. The L. & N. was one competitor, yes. There were other roads that could have hauled the oil out of Whiting, too, I presume—gotten it down into the Southeast. It might have come out over the Pan Handle or the Monon, or some other road running to the Ohio River.

Q. The regular tariff rate to the Ohio River at Evansville was 11 cents a hundred, wasn't it?—A. I could not say, Mr. Kellogg.

Q. Well, isn't that your recollection?—A. As to what the rate was to the Ohio River I would not have any definite recollection.
10538 My jurisdiction was south of the Ohio River then.

Q. Well, assuming it was 11 cents. That appears in this case.—A. Yes.

Q. The published tariff rate was 11 cents.—A. Yes.

Q. The rate from Evansville to Grand Junction added to that 11 cents made it more than 13 cents, didn't it?—A. Oh, yes, a good deal more, I should say.

Q. Now, what was your object in putting in the 13-cent rate from Whiting to Grand Junction either over your line or in connection with the other lines?—A. Why, Grand Junction was not the destination of the oil.

Q. I quite understand that.—A. The rate, of course, did not apply to Grand Junction proper.

Q. I quite understand that.—A. The rate to Grand Junction was only a part of what would ultimately be a through rate.

Q. But at the time the 13-cent tariff was put in the combination of rates through Grand Junction to the South far exceeded 13 cents, didn't it?—A. Why, the rates from Whiting into the Southeast were not made with any regard to Grand Junction, ordinarily, at all. They were made ordinarily, almost entirely, if not entirely, on the Ohio River basis, as it was termed.

Q. Yes, but that Ohio River basis far exceeded the 13 cents to Grand Junction, didn't it, plus the proportion south of the Ohio River?—A. Plus?

Q. I mean plus the proportion south of Grand Junction. In other words, there was no combination by which you could get oil into Grand Junction at 13 cents a hundred when you made that
10539 rate, was there?—A. No combination? I don't understand that. I don't know as you do.

Q. In other words, when you made the 13-cent rate, there was no combination by which you could get that oil from Whiting to point of destination as cheaply as you could after you made the 13-cent rate, or as cheaply as they did?—A. Well, I could not say as to that right now. In the first place, I want to say that I did not make that 13-cent rate.

Q. Who did make it?—A. I mention that because your question rather would infer that. I did not make it. The tariff shows that the C. & E. I. road made it.

Q. I am talking about the first Grand Junction rate. You concurred in it, didn't you?—A. We concurred in it, certainly, as has been suggested.

Q. Well, the combination that you made with the Louisville & Nashville and the Evansville & Terre Haute on this oil was much less than the combinations of the other lines at that time?—A. I could not say as to that. What I understand you to mean is this: That by using 13 cents a hundred to Grand Junction, either via the Illinois Central direct or via the C. & E. I. and the E. & T. H. and Illinois Central through Evansville (in either case) to Grand Junction, that the rate charged through from the shipping point to ultimate destination was less than would have been charged had the shipments been forwarded via other routes?

Q. On the 11 cents to Evansville and the——A. Well, whatever it was. I could not say, but I presume it was. I would like to add to that, please, that I really believe that that was the object in
10540 making the rate, so that it would be less than the other fellow's rates.

Q. I have no doubt that is true, Mr. Hurlbut. That is what I supposed all the time. Now, Mr. Hurlbut, you said that prior to the Commission's order of 1906 it was the practice of railroads to use local State rates not filed with the Interstate Commerce Com-

mission in interstate shipments.—A. To make through interstate rates?

Q. Yes.—A. Yes, sir; I did say that.

Q. Then, in your opinion, it did not make any difference whether the rate was filed with the Interstate Commerce Commission; it could be used for an interstate shipment?—A. Yes, sir; as regards a local State rate.

Q. Under that condition you could ship a car of freight from New York to California without ever complying with any tariff on file with the Interstate Commerce Commission, if each State had separate rates, could you?—A. You could; but in that case you would pay a whole lot more than if you would ship it on a through rate.

Q. Suppose the railroads had started out to defeat the interstate commerce act and had filed rates separately in each State—I mean made rates separately in each State—and had not filed them with the Commission, all of the commerce of the country could have been shipped on those rates and not on the rates filed with the Interstate Commerce Commission, couldn't it?—A. I don't believe it could.

Q. Why not?—A. Too much work attached to it, for one thing.

Q. Well, it could have been done, couldn't it, under your
10541 theory?—A. I do not believe so. I will tell you now, as a general proposition, that when combinations of local rates were discovered it was not very long afterwards that there were incorporated into through tariffs——

Q. Discovered by whom?—A. By anyone.

Q. By the Interstate Commerce Commission?—A. Oh, no, no; I don't mean that. Discovered by anyone. That is, combinations of local rates lower than through rates were considered to be an advantage to the railroads who discovered them. As a general proposition those advantages did not last very long before somebody else got on to them—some competitor found them out.

Q. Your idea is that the practice of the railroads was to use a local State rate not filed with the Commission, in order to get traffic away from some other road at a lower rate?—A. If by so doing it made a lower rate than was in effect by the other road; yes, sir.

Q. But as soon as it was discovered by the other road it was generally published in a tariff?—A. That was very, very frequently the case; yes.

Q. And the purpose, then, was, in using that combination of State rates, to conceal it from the other fellows?—A. Just as long as it could be done—so long as the road that discovered it could continue to handle the business at the rates that were in effect legally.

Mr. ROSENTHAL. Thus carrying to its greatest length the doctrine of competition.

Q. And such State rates were made for that very purpose, weren't they?—A. How is that?

Q. Such State rates—local State rates—were made for that purpose, weren't they, by the railroads?—A. No, indeed; no.

10542 Q. Often made for that purpose, weren't they?—A. Not often, no. Those combinations were accidents a good deal oftener than they were——

Mr. ROSENTHAL. Designed.

WITNESS. Yes; designed or intentionally made.

Q. You think all these local State rates that have been used, the combination of them, were usually accidents, do you?—A. Yes, so far as it may be possible for them to be used to make lower through rates than the published through rates. Now, let me illustrate. There are quite a number of factories just west of here, say at Rockford, at Dixon, at Freeport, Illinois, big concerns to which low rates are made from Chicago on a lot of raw materials, on leather, on lumber, and on different articles that are used in those factories. Those are exceptionally low rates made by the Chicago railroads in order to build up those industries. It so happens that on a shipment from the East a through rate might be simply a class rate, and the class rate to this manufacturing point west of Chicago is quite high in proportion to the rate to Chicago. So that by taking the rate to Chicago proper and then adding to it the low commodity rate that was made on the raw materials from Chicago to the western point in Illinois, the two together would make less than the through class rate. But in that case this low commodity rate from Chicago was not made for the purpose of cutting a through rate; it was made for the purpose of helping the manufacturer out there.

10543 Q. Now, you say, in giving your opinion about quoting a lawful rate on an interstate shipment—you have used the word that it was a lawful rate several times. Do you mean now or prior to 1906?—A. I mean prior to 1906. As a matter of fact, there is some doubt in my mind, personally, about whether it is lawful now or not—in my own mind, I say.

Q. You have doubt about its being lawful now?—A. No; I mean that there is some doubt in my mind as to whether it is unlawful; that is what I mean.

Mr. ROSENTHAL. As to whether the Commission had any lawful right to make the new rule?

WITNESS. That is what I mean, or whether the new rule is really a law or whether it is the expression of an opinion.

Q. Then you are giving your opinion as to whether that rate is lawful or not as a legal proposition, are you?—A. Oh, no; oh, no. I am talking now of prior to 1906. The Hepburn bill, when the Commission was given additional authority——

Q. Now, what change did the Hepburn bill make in the requirement of filing tariffs—any?—A. Yes, quite a lot of them.

Q. What were they?—A. Well, in the first place you have got to put the postage on them that they need; otherwise they will be thrown out.

Q. Is that provided in the Hepburn bill?—A. No; but by the rules that go with the Hepburn bill, that were issued subsequent to it.

Q. In what respect? Name one single thing in the Hepburn bill

that changed the law as to the filing of tariffs, as to railroads?—A. Well, now, let us see if I can recollect any.

10544 Mr. ROSENTHAL. Simply filing them or posting them, do you mean, or both?

Mr. KELLOGG. Filing the tariffs with the Interstate Commerce Commission.

Mr. ROSENTHAL. I suppose the two acts themselves, by being compared, are the best evidence of whether or not there is any difference between them.

Q. Please answer the question.—A. I can not recite any now.

Q. The fact is there isn't any difference, is there?—A. I will take your word for it.

Q. The law has always required the filing of tariffs, hasn't it?—A. Interstate tariffs.

Q. Yes, sir, and any tariff used for interstate shipments?—A. No; I don't understand it that way.

Q. You don't?—A. No. When I was handling tariffs as a tariff man, in charge of it, those were not the instructions I got from the officers. My instructions were to send to the Interstate Commerce Commission the interstate tariffs and not send them anything else.

Q. You cited instructions of the Commission issued in 1906. Isn't it a fact that those instructions, in substantially the same form, have always existed, and were made shortly after the organization of the Commission in 1888?—A. Well, I should say not.

Q. Well, should you?—A. Not that I know of. Otherwise it seems to me it would not have been necessary for the Commission to hold the big conference which they did in 1906, right in this building, with a committee representing all of the freight

10545 traffic men of the railroads all over the country in order to determine what the rule should be with respect to making up and posting and filing tariffs.

Q. The Commission found, didn't they, that the roads had been violating the law, and jerked them up?—A. No, no. The idea was that the Commission wanted the railroads to do more at that time than the railroads had been doing.

Q. Well, you base your opinion that these tariffs you have been testifying to were legal prior to 1906 on the ground that the Commission at that time, in 1906, changed its ruling, do you?

Mr. ROSENTHAL. He hasn't said anything of the kind, and he has not been asked about that. I asked him as to the practice that prevailed.

Q. Well, you have frequently said that these were lawful tariffs prior to 1906; is that true?—A. They were lawful tariffs; why, certainly.

Q. On which to make interstate shipments?—A. That is the local State tariff, for example in Illinois, was lawful tariff.

Q. To make an interstate shipment on?—A. Yes.

Q. Prior to 1906?—A. Yes.

Q. Do you consider it so now?—A. Well, I wouldn't want to express any opinion on that now.

Q. Well, you are very clear about prior to——A. If I could get a railroad to take some of my shipments on that basis, I, as a shipper, would not be afraid to stand the test of it.

10546 Q. That is now?—A. Now.

Q. But you were very clear about it prior to 1906?—A. Yes; I was quite clear on that prior to that time. Prior to that time, you might say, I was in the railroad business, and I don't know that my views on that question have changed since I have gotten out of the railroad business as to whether or not it was legal to use those tariffs.

Q. But the difference in your opinion is by reason of the ruling of the Commission made in 1906, is it?—A. Well, I have not admitted that my opinion has changed. I stated that I was in some doubt as to whether or not the law in that regard is any more stringent than it has been, than it was.

Q. Well, you had no doubt prior to 1906?—A. I never thought of it. It never came into my mind that there was anything illegal about it.

Q. Now, let me call your attention to the order made by the Commission in 1888: "Interstate Commerce Commission, Auditor's Office. Washington, February 13, 1888. Roads located wholly in one State or Territory, which interchange freight or passenger traffic with connections to or from points outside of such State or Territory on through tickets or bills of lading, should file tariffs covering such traffic with the Commission." That is part of the order particularly applying to that subject. Now, if that order was in force since 1888, then the Commission's ruling in 1906 has not changed it, has it?—A. No; but I don't know anything about this.

Q. Well, there is the order, and it was made in 1888 [hand-

10547 ing pamphlet to witness]. That is a publication of the Commission, or a compilation republished in 1896.—A. I don't know that I ever have seen that.

Q. Well, that is a regular publication of the Commission.—A. I make that statement with the added statement that I was directly in charge of issuing tariffs and certainly would have paid some attention to it unless the legal department of the railroad company had said not to pay any attention to it.

Q. If that order was in force after 1888, then the Commission did not change the law any in 1906, did it, by its order?—A. Oh, yes; they have.

Q. In what respect?—A. You take this through bill of lading business, it has changed the whole thing.

Q. It does? Now, I will come to that.—A. That is, it could be made to avoid that very easily.

Q. Now, what is a through bill of lading?—A. A through bill of lading is a document issued by one railroad as a receipt for certain goods tendered to it for shipment to another point of destination,

and the term "through bill of lading" usually means that the destination is located in a different State from the shipping point than the one in which the shipping point is located, and also on another railroad.

Q. That is, the railroad gives the shipper a receipt or bill of lading for the goods which specifies that it is to be shipped, we will say, from Chicago, Illinois, to Kansas City, Kansas, off from the line, into another State. That is what you would call a through bill of lading, isn't it?—A. Yes.

10548 Q. That is the receipt to the shipper. Now, that is what you call a through consignment, isn't it?—A. No; not necessarily.

Q. It is consigned through by a through bill of lading; isn't that correct?—A. The term "through consignment" is not very clear-cut. It may mean one thing in one case and another thing in another. It is not a generally used term.

Q. What is the meaning of "through consignment?" How would you consign goods through to a point of destination in another State?—A. The term "through consignment" might mean a through shipment because oftentimes the words "consignment" and "shipment" are synonomous—that is, it depends upon the connection in which they are used.

Q. If a railroad consigns goods through from one point in a State to a point in another State, what kind of a document do they make for the consignment?—A. Now, right there—the railroad does not make the consignment through; it is the shipper.

Q. If a shipper consigns a shipment through from one State to another, by what sort of a document is it done?—A. Why, the evidence of shipment is usually in the shape of a bill of lading or shipping receipt.

An adjournment was here taken until the morning of Monday, October 19, 1908, at 10.30 o'clock.

10549 ROOM 617, FEDERAL BUILDING,
Chicago, Ill., Monday, October 19, 1908—10.30 a. m.

A recess was taken until 2 o'clock p. m when the hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison. On behalf of the defendants, Mr. John S. Miller, Mr. Chauncey W. Martyn.

Mr. MARTYN. It is agreed by counsel for the Government and for the defendants, with regard to defendant's Exhibits 190–A, 190–B, 190–C, and 190–D, that the cover of Missouri Pacific Railway Tariff I. C. C. 1744, the same being defendants' Exhibit 190–A, shall be copied into the record; that the rest of the tariff need not be copied.

It is also agreed that this tariff is a printed document consisting of 24 printed pages; that the tariff names rates on a large number of

commodities other than on petroleum oil, as testified to; that pages 7 to 20 contain various information with regard to different territories under the heading "Territorial boundaries," including a large number of points from and to which the tariff applies, the rates therein named being between such points and the particular points specified on the cover, namely, Shreveport, Monroe, Alexandria, and Boyce. Pages 7 to 14 consist of the information above specified with reference to points west of the Mississippi River. On page 14,

10550 after such information, is the following language:

"The foregoing will be subject to the following exceptions: Rates so made to Monroe and Alexandria must not be higher than present published tariff rates to those points. (See Freight Tariff No. 2890, I. C. C. No. 1650, and Tariff No. 2000, I. C. C. No. 10, or subsequent issues thereof.)"

It is further agreed that four subsequent issues to Missouri Pacific Tariff I. C. C. 1744, viz, I. C. C. 2758, effective February 15, 1899; I. C. C. 3586, effective October 15, 1900; I. C. C. 4288, effective June 16, 1902, and I. C. C. 5336, effective July 1, 1903 (three of such issues being the tariffs previously marked Defendants' Exhibits 190–B, 190–C, and 190–D) continued the same rate on oil until October 25, 1905, and are in substantially the same form as Tariff I. C. C. 1774. The four last-named tariffs, however, are not to be copied into the record; but all of said tariffs shall be considered in evidence and may be produced on any hearing of this cause in any court, for the use of court and counsel in this case, with the same effect as if copied into the record, and the counsel for the Government will procure the production thereof from the Interstate Commerce Commission.

With regard to petitioner's Exhibit 929, the same being joint freight tariff of the Missouri Pacific Railway and other railways, No. 16–A, compiled by S. Frink, St. Louis, Missouri, bearing I. C. C. No. 60, it is agreed that it is a printed document consisting of 26 printed pages, and names rates on various commodities and on classes between the points specified on the cover; that only the cover and page 19 need be copied into the record, page 19 being the

10551 only page which shows commodity rates on petroleum oil in carloads, but that the original tariff will be produced as above agreed as to the tariffs last previously specified.

Mr. MILLER. It is admitted for the purposes of this case only, but not to be used in any other case or proceeding, that the Standard Oil Company of Indiana received from the auditor of the Chicago & Eastern Illinois Railroad Company from time to time during the period from January 1, 1899, to November 30, 1905, and usually semimonthly during that period, bills known as collection vouchers for the freight charges on shipments of oil made by the Standard Oil Company of Indiana from Whiting to Evansville, and that attached to such bills there were statements of billing or lists of shipments showing in many cases, as to each shipment covered by the collection bill or collection voucher, the date of shipment, the waybill number, the car number, the weight, the rate of 11 cents per hundred

pounds on shipments of oil, or the amount of freight charges computed at said rate of 11 cents on oil, or both, and the final destination of said cars, and that among said statements, containing either the said rate of 11 cents per hundred pounds on shipments of oil or the said computation of freight charges at that rate, were all of the statements for the period from September, 1903, to June, 1905, inclusive; that among the collection vouchers and statements of billing so rendered to the Standard Oil Company of Indiana were collection voucher 29007 and attached statement of billing, being petitioner's Exhibit 525, and collection voucher 1309 and attached statement of billing, being petitioner's Exhibit 526, and collection voucher 7568 and attached statement of billing, being petitioner's Exhibit 527;

10552 which three last-mentioned exhibits are illustrative forms of the greater part of said collection vouchers and the statements of billing attached thereto above mentioned in this stipulation; and that the bills or collection vouchers thus rendered to the Standard Oil Company of Indiana were based on rates of either 8¼ cents or 6 cents per hundred pounds, and that such bills (sometimes with minor clerical corrections) were paid by the Standard Oil Company of Indiana to the Chicago & Eastern Illinois Railroad Company.

W. D. HURLBUT, recalled, and his cross-examination resumed, as follows:

By Mr. KELLOGG:

Q. Mr. Hurlbut, when we adjourned Friday night, as I recollect you stated that a through consignment would be made by what was known as through bill of lading. Now please explain to me the distinction you proposed to make, or I understood you desired to make, between this order of February 13, 1888, which in substance required State rates used for interstate shipments on through tickets or bills of lading to be filed with the Commission, and the order of 1906, which did not use the words "of through bill of lading."—A. There is a difference, Mr. Kellogg, but frankly I will say I do not believe that difference was intended. A consignment, for example, might start from New York to Chicago and be consigned to a man in Chicago who had a customer at a point west of Chicago, and the man in Chicago might re-consign the shipment to the point west of Chicago, say to Freeport, Illinois. In that case it would not be a through consignment from the original point of shipment to the final destination. However, as I first stated, I do not believe that that difference was intended.

Q. That is, if a consignment of goods is made from New York to San Francisco on a bill of lading or receipt to the shipper, it states

10553 that it is to be shipped from New York to San Francisco, you would consider that a through shipment on a through bill of lading, would you?—A. Yes.

Q. And on such a shipment as that, under this order of the Commission of 1888, if that order was made, it has been necessary to file any tariff used as a part of the through shipment, hasn't it?—A. Yes, I should say so, according to the wording of that order.

Q. Now, you do not pretend to state, do you, Mr. Hurlbut, as a proposition of law, that it has not always been necessary to file a tariff used upon a through shipment under a through bill of lading?—A. I could not say, Mr. Kellogg, as to the law feature. Any orders that were issued by the Commission relating say to tariff matters, when received by the railroads, were very promptly referred to their legal department for instructions, and the legal department of the railroad would tell the officers of the freight department what it would be necessary for them to do; the freight department men having no knowledge of the law and being busy with other matters, simply carried out orders.

Q. Then, all of your answers in which you include these local State rates which were not filed with the Interstate Commerce Commission are based on the assumption that as a matter of law it was not necessary to file local State rates, although used as a part of the through shipment as a basis?—A. That has always been my understanding, up——

Q. And your answers here about using these local rates are upon the assumption that they were not required by law to be filed
10554 when so used?—A. I will have to repeat that I can not say as to the law, but I can say very positively as to the general custom.

Q. In answering Mr. Rosenthal, you used the word that you would quote as a "lawful" rate, certain rates.—A. Yes.

Q. Now, that is based, of course, upon the assumption that those rates were lawful rates?

Mr. MILLER. That they so understood.

WITNESS. Precisely.

Q. You do not pretend to pass upon the question whether those rates were required to be filed or not?

Mr. MILLER. You mean now?

Q. No.—A. I say that according to all custom in the general freight offices that I was connected with and of which I was the head, it was not necessary to file those rates with the Interstate Commerce Commission.

Q. Now I refer you to a decision of the Interstate Commerce Commission which you may be familiar with, dated April 12, 1899, in which the Commission decided that "when rates established to apply between points within a single State are applied as a part of combination rates on transportation through different States, such rates, as well as the interstate rates with which they are combined, must be published at stations and filed with the Commission as provided by section 6 of the act to regulate commerce."

Mr. MILLER. I would suggest that the counsel either show that paragraph to the witness or read the whole paragraph.

Q. I will read the whole paragraph of you desire.

Mr. MILLER. Very well, read the whole paragraph—that
10555 which precedes what you have cited.

Q. I will read it: "It is found in this case that various carriers engaged in the carriage of corn at combination rates from Illinois points to the seaboard had not filed with the Commission the local rates in Illinois which they apply on that traffic in connection with through rates from Chicago or other market cities in Illinois, and special request had to be made by the Commission for such rates before we could determine what rates were actually in effect from such originating points in Illinois to the seaboard. A similar practice of not filing State rates with the Commission is followed by carriers in other parts of the country. When rates established to apply between points within a single State are applied as a part of combination rates on transportation through different States, such State rates as well as the interstate rates with which they are combined must be published at stations and filed with this Commission, as provided in section 6 of the act to regulate commerce." Now, I call your attention to the fact that that decision was made in 1899, seven years before this other ruling which you mentioned, and all of the western lines of railroad were parties to that investigation, including the Illinois Central, the Chicago & Eastern Illinois, and all the Chicago roads. Now, if that decision was made in 1899, you can hardly claim that after that a rate which was not filed could be used any more than it could after 1906, can you?—A. I will reply to that question in this way, Mr. Kellogg: At the time that decision was made
10556 by the Commission I do not know that they issued any order to the railroads in conformity with the terms of that decision, I mean as regards the filing of tariffs. Furthermore, that decision was rendered about nine years after the issuance of the rules to which you formerly alluded, and after a lapse of nine years the Commission itself stated, not only with respect to the particular case in point, but in a general way, that the railroads were not filing local State tariffs with them, and it seems to me that they recognized by that decision—in fact, their statement is direct on the point—that that was the custom.

Q. Yes; but they did not recognize the validity of it, did they, because they said it was not valid?—A. They recognized the custom that had been in effect for at least nine years after their circular had been issued.

Q. That is, they recognized that the railroads were violating the law, the same as they frequently did, and called on them to stop it?

Mr. MILLER. No, they did not call on them to stop it. They did not issue any order on that.

Q. Now, you do not pretend to say that because railroads paid rebates for many years that made them legal, because it was the custom to pay rebates, do you?

Mr. MILLER. I object to that as assuming a fact, and also as immaterial.

Q. Mr. Hurlbut, you don't, do you?—A. I would say this, that if any railroad did pay a rebate during the time that the interstate law was in effect, a rebate applying on interstate traffic, that they were certainly violating the law.

10557 Q. Well, you know they did do it, don't you?

Mr. MILLER. I object to that.

A. I have heard of its being done.

Q. You do not think that practice made it legal, do you, Mr. Hurlbut; do you?—A. Oh, no; by no means.

Q. Now, Mr. Hurlbut, I am not going over each one of those cases, but you take the 6-cent rate out of Chicago which you used as a part of an interstate shipment, the rates in New York called the Olean and Norwood rates which you said you would quote as part of a through shipment, and those other rates. Your answer was based entirely upon the fact that those rates, although not filed with the Commission, might be used as a part of an interstate shipment?—A. Yes, sir.

Q. That is all I wanted to know about that. Now, you say if you were asked to quote a rate from Olean to Burlington, you would quote the 9 cents a barrel rate from Olean to Rochester, the 9 cents a hundred rate from Rochester to Norwood, and the $23 a car rate from Norwood to Burlington, the latter only of which was filed with the Commission. You assume, of course, that you knew about those rates, and as a railroad officer you would quote them, don't you?—A. Yes. If a shipper came to me and asked me for the lowest rate that could be made on oil from Olean to Burlington, I would immediately look around to see what through rate was in effect, and whether there were any local rates which combined would be lower than the through rate, and whichever was the lower, I would have quoted it.

Q. That is, if you did your duty by the shipper?—A. And the company that I represent.

10558 Q. Now, if those rates were marked "For account of Standard Oil Company," any of them, you would not have any right to quote them to any other shipper, would you, if the traffic manager had made a rate and furnished it to you as the local agent of the company?

Mr. MILLER. You are not referring now to Olean?

Q. No, not to Olean. If the traffic manager had made a billing order, or whatever you call it, and furnished it to the company, which read "For account of Standard Oil shipments," you, as local agent, would obey the tariff, wouldn't you, and you would quote that to the Standard Oil alone?—A. If another shipper came to me and asked what the rate was, and I noticed that the tariff showed for account of any given shipper, I would immediately communicate with the main office and say another shipment was offered, and what rate should I use, and I will venture to say the reply would come back, "Use the rate that is shown in the tariff to which you refer."

Q. But without authority from your traffic manager you would not have any right to quote that rate, would you?—A. No. No agents

have any right to quote any rate except those shown in the tariffs or billing orders.

Q. Now, if a shipper out in Ohio, for instance, should get it into his head that he wanted to ship to northern Vermont, and wrote to the Interstate Commerce Commission for the rate, he would not be apt to know anything about this rate which you say you would quote, because there is no notice of it whatever?—A. That is true.

10559 Q. What does the tariff mean where it says "Not to be posted," like this Olean rate or this Norwood rate?—A. Is that on the tariff?

Q. Yes.—A. I do not recollect that I noticed that feature of it.

Q. Now, you take this rate from Olean to Rochester (I show you petitioner's Exhibit 608); you will notice on the top of it, "Not to be posted." What does that mean?—A. I should say that it means that the tariff is not to be placed in the waiting rooms of the shipping station in the same manner that interstate tariffs are supposed to be placed in the waiting rooms.

Q. Placing the tariff in the waiting room is what you understand by posting?—A. By posting them; yes, sir.

Q. Now, if those were not to be placed in the waiting rooms where the station agent does business, how is he going to quote them to the general shipper? Would not you call that a restriction?—A. No; I can't see that that would prevent any agent—that is, the agent at Olean in this case, from quoting this rate to any shipper—the fact that it says "Not to be posted."

Q. If he knew anything about it?—A. Why, the agent certainly would know about it, because the tariff was undoubtedly sent to him.

Q. What is the object of keeping it out of his files, then?—A. It was not kept out of his files. It was kept out of the public files, I presume, because it is simply a State rate and not an interstate rate.

10560 Q. And the intention was to keep it out of the public file, where anybody could go and look at it, wasn't it?—A. This presumably is only one of a great many others. I do not know the rules in New York State, but I imagine that they are the same, very likely, as the rules in Illinois. Railroads are not required to post tariffs in Illinois, and probably not in New York, but I can't say definitely on that point.

Q. Now, if you were the agent at Olean, how would you know how to quote a through rate or a combination of rates on a shipment from Olean to Burlington, if the tariff from Rochester to Norwood was not posted in your file?—A. It would be impossible for him to quote it from the information in his possession.

Q. Now, the only thing you could do would be to quote the rate from Rochester, wouldn't it, if the tariff from Rochester to Norwood had the same notice on it, "Not to be posted?"—A. Yes.

Q. It is on the bottom of that?—A. Yes.

Q. Then, that would not be in your hands, at Olean, would it?—A. No, sir; presumably not.

Q. So you would not know, then, as the agent at Olean, a combination of rates including that 9-cent rate from Rochester to Norwood, would you?—A. No, sir.

Q. Then, if any shipper at Olean wanted to quote a through rate from Olean to Burlington via Rochester and Norwood, you would have to quote him some other tariff, wouldn't you?—A. I doubt very much, Mr. Kellogg, if the agent would quote any rate at all without communisating with his superior freight officer.

10561 Q. He could certainly quote the 26½-cent rate which I show you, couldn't he?—A. He certainly could from this tariff, yes.

Q. That tariff was filed and posted?—A. Yes, sir.

Q. And the agent at Olean, if called upon for a rate, could quote that as far as Norwood, and the $23 a car rate beyond—that is, from Olean to Norwood via East Buffalo, as you say?

Mr. MILLER. What is the number of the exhibit, Mr. Kellogg, that is so shown to the witness?

Mr. KELLOGG. I do not know, because this is an original, not marked.

Mr. MILLER. It is the tariff that refers to the division sheet.

Mr. KELLOGG. Yes, I just mentioned it, which he construes to go via East Buffalo.

WITNESS. Yes.

Mr. MILLER. Via Buffalo, and not to furnish a rate by way of Olean or Rochester?

Mr. KELLOGG. I am asking him if he would not quote a rate from Olean to Norwood. I am not asking about the particular route.

Mr. MILLER. About the route.

WITNESS. This being the only tariff that the agent at Olean is supposed to have in his possession, I do not see how he could have quoted other than what that tariff showed, provided he quoted any.

Q. By that tariff you mean the 26½-cent rate?—A. I mean

10562 that 26½-cent rate, because that is all the information that he had.

Q. Now, as I recollect, you said in the early 90's the railroads commenced to use application sheets to make Chicago rates applicable to Chicago switching district points. That was correct, wasn't it?

Mr. MILLER. In 1890?

Mr. KELLOGG. In the early 90's, he said.

Mr. MILLER. In the 90's; yes.

WITNESS. Yes.

Q. Later, and about 1901 or 1902 (I may be mistaken about the date), the Commission required the roads to schedule the tariffs upon the application sheets, did they not?—A. I can't say as to that requirement, but I know that the roads commenced to do it.

Q. Now, in your testimony I notice you said the roads commenced to put the principal tariffs upon their application sheets. Is it not a fact that about 1902, '3, and '4, at various dates, the Commission wrote to various railroads in the Chicago district, requiring them to

schedule all their tariffs, all Chicago tariffs, which they made applicable to the Chicago switching district?—A. I can't say as to that, Mr. Kellogg, but I know that one part of their circular 15–A is quite specific on that point.

Q. I show you petitioner's Exhibits 931–A, 931–B, and 931–C, purporting to be the correspondence between the auditor of the Interstate Commerce Commission and Mr. Wann, of the Alton road, in August, 1901, and ask you if you understand that to require
10563 the scheduling of all the tariffs applicable to the Chicago switching district?—A. (After examining documents.) What was the question, please, sir?

Q. Do you understand that to require the scheduling of all the tariffs applicable to the Chicago switching points on the application sheets?—A. That may have been the intention; but I do not believe that the Interstate Commerce Commission auditor expressed that idea very clearly.

Q. That was the intention of that correspondence, wasn't it?—A. One part says, in effect, that a copy of the application sheet should be attached to each tariff, meaning the tariffs in connection with which the application sheet was to be used.

Q. Or—— A. Or in lieu of that, I. C. C. 981 should give specific reference to the I. C. C. numbers of the tariffs affected thereby.

Q. Yes.—A. That is to say, that latter part which I have just quoted is an alternative proposition. We will take it just as it reads, and in view of the fact that a lot of tariffs applying, say, in Illinois locally do not have I. C. C. numbers, why, it can be seen that that request, even if complied with, as he put it, would not cover the Illinois tariffs.

Q. But that is plain evidence that the Commission understood that any tariffs that they were to use were to be filed and scheduled under their I. C. C. numbers, wasn't it?—A. No, I do not see it that way.

Q. You do not think so?—A. I do not see it that way.

Q. Do they say anything about using a tariff not filed?—A. No; but it says, "Should give specific reference to I. C. C. numbers of the tariffs."

10564 Q. Does not the first letter say, "Your I. C. C. No. 981, taking effect August 13, 1901, does not plainly show the rates to be charged, as the law requires?"

Mr. MILLER. Has that been offered in evidence?

Mr. KELLOGG. Yes; this is in evidence.

Q. "I have to request, therefore, that the schedule be reissued as a supplement to the tariffs, showing the rates, or that reference be at least made to the I. C. C. numbers of such tariffs, so that the Commission may have ready access to the same;" in other words, that the application sheets should show the rates which were applicable. Is not that stated in the first letter?—A. The first letter, the one which you just read, can be taken just as I stated with respect to their last letter, dated September 4.

Q. Now, Mr. Hurlbut, how would the application sheet show the rates that were applicable to Whiting on its face unless they were

scheduled in some way? Will you tell me? Is not that so the Commission would have in its files either the rates or reference to the rates so they could find them?—A. That is probably what they desired, but——

Q. Yes, sir.—A. But they did not so state it. Both of those letters could have been complied with literally without the Commission obtaining the information that possibly they intended to ask for.

Q. Now, I will read further: "The schedule in question, which you term an application sheet, is, in fact, an amendment to all tariffs affected, in that it increases the number of points between
10565 which the rates in said tariffs will apply. Copy thereof should therefore be attached to each of such tariffs, or, in lieu of that, I. C. C. No. 981 should give specific reference to the I. C. C. numbers of the tariffs affected thereby." Well, now, if that meant what it says, it meant that the application sheet should show the rates from Whiting, didn't it, so they would know and have definite reference to them?

Mr. MILLER. I think I will object to this as incompetent. The letter shows for itself.

A. You can readily see, Mr. Kellogg, that if compliance was had with the alternative proposition mentioned by the Commission their request would have been complied with, but at the same time they would not have had all of the rates in their possession.

Q. They would not have had the rates unless those rates were filed with the Commission?—A. No. Well, of course, that is obvious; but what I mean is, if there was a tariff in effect from Chicago to Bloomington, Illinois, a local tariff without an I. C. C. number on it, and that was not filed with the Commission because it did not have an I. C. C. number on it, as they say, to please file the tariffs bearing I. C. C. numbers, that is what they have asked——

Q. You do not pretend to say that this letter means that the application sheet must show the rates "except rates that we do not know anything about," do you?

Mr. MILLER. I object to that as incompetent. The letter shows for itself.

A. Oh, no; I do not intend to convey any such idea as that.

Mr. MILLER. This witness was not put on as an expert to
10566 construe correspondence of the secretary or auditor of the Interstate Commerce Commission.

Mr. KELLOGG. He has been construing rates and giving his opinion on them.

Mr. MILLER. That is a different proposition.

Mr. KELLOGG. That is all.

WITNESS. May I make a statement here? Would it be proper, in connection with that correspondence?

Mr. MILLER. Yes.

WITNESS. I notice that correspondence is dated 1901.

Mr. KELLOGG. Yes.

WITNESS. The Commission in the letter do not seem to refer to their 1888 circular, nor to the 1899 decision.

Q. What about.—A. I mean about filing tariffs with the Commission, even state tariffs.

Q. This letter was solely on the subject of application sheets showing—— A. It is a tariff, because it bears an I. C. C. number.

Q. I do not know whether that letter should include anything about—— A. I am making that statement to bear out my previous statement as to the custom and the general understanding of the railroad men about there being no necessity for filing State tariffs with the Interstate Commerce Commission.

Redirect examination by Mr. MILLER:

Q. You were asked upon cross-examination by Mr. Kellogg as to what change the Hepburn bill made in the requirement of filing tariffs, and you said it made changes, quite a lot of them. By
10567 the Hepburn bill you referred to the act of 1906, amendatory of the interstate commerce act?—A. 1906; yes, sir.

Q. Approved June 29, 1906?—A. Yes, sir.

Q. Now, I show you a copy of that act, and call your attention to section 2 of that act, which amends section 6 of the interstate commerce act, and ask you to read from the beginning of this amended section 6 down to the word "transportation" at the end of the first sentence of the amended section [handing witness pamphlet]. Read it aloud.—A. "Section 2. That section 6 of said act, as amended March 2, 1889, be amended so as to read as follows: Section 6. That every common carrier subject to the provisions of this act shall file with the Commission created by this act, and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route, and between points on its own route and points on the route of another carrier by railroad, by pipe line, or by water, when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print, and keep open to public inspection as aforesaid the separately established rates, fares, and charges applied to the through transportation."

Q. Now, was there any such provision as that last in the interstate commerce act prior to that amendment? I refer you now to a copy of section 6 of the act which was amended by this Hepburn
10568 act. You may look it over.—A. No, sir; I can not find anything in the original act that corresponds with that section 2 of the amended act.

Q. This requirement of the amended section 6, "that if no joint rate over the through route has been established, the several carriers in such through route shall file, print, and keep open to public inspection the separately established rates, fares, and charges applied to the through transportation," that is now in the Hepburn Act, is it?—A. Yes, sir.

Q. Now, looking at section 6 of the interstate-commerce act before it was so amended, and to the provision as to the filing of tariffs with the Commission, will you read as to what tariffs it was that were to be so filed?—A. "Every common carrier subject to the provisions of this act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same." I think that covers the point you want.

Mr. KELLOGG. Don't you think, Mr. Miller, that the court is competent to construe the acts of Congress?

Mr. MILLER. Oh, yes; but my friend on the other side was the one who asked the witness whether the Hepburn Act had made any changes.

Mr. KELLOGG. No; he said he based his view largely on the fact that this only had been required to be filed after the passage of the Hepburn Act. So I asked him what change was made. In
10569 fact, it has not made any change in that regard. The language of the law is exactly the same.

Mr. MILLER. It has made an absolute change in the respects to which I have called your attention, that it now expressly requires the carriers to file their tariffs on their separate lines, if used as a portion of a through route.

Mr. KELLOGG. Well, the Supreme Court of the United States has held long ago——

Mr. MILLER. And in the other case I will ask the witness to read the provision as to joint tariffs and the filing of them.

WITNESS. "Every such common carrier shall also file with said Commission copies of all tariffs, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party; and in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission."

Mr. KELLOGG. I think, Mr. Miller, you will admit that the Supreme Court of the United States held long ago that all local tariffs used as a part of a through route had got to be filed?

Mr. MILLER. Where did they so decide? I should like to get hold of that decision.

Mr. KELLOGG. I will refer you to it on the argument.

Q. Referring to the questions that Mr. Kellogg has put to you about the assumption on which the use of unfiled State rates on transportation commencing in one State and destined to
10570 another was made, I will ask you whether or not the fact was that you and other rate men to your knowledge understood the interstate-commerce law to authorize such use of unfiled State rates as you have testified about?

Mr. KELLOGG. That is objected to as incompetent.

A. I did; yes, sir. We understood that in a general way the law was to prevent discriminations as between shippers, but that it was not framed with the idea of preventing the railroads from giving the shippers the lowest rates that could be figured out.

Mr. KELLOGG. Whether they were filed or not?

WITNESS. Whether they were filed or not, as regards State rates.

Q. But if a line of road, we will say, for instance, the Chicago Terminal Transfer Railroad as an illustration, extends from a point in Indiana, say Whiting, over to a point in Illinois, say Chappell on the Alton, what would you say as to the necessity of filing the rate for that transportation from Whiting over to Chappell by that road?

Mr. KELLOGG. Same objection.

A. Why, that would be an interstate rate.

Q. Sure.—A. And should be filed, according to the interstate-commerce act.

Q. Yes; that haul is from one State into another?—A. Yes, sir.

Q. Now, how would it be with respect to, say, a railroad to which that freight was delivered, say the Alton at Chappell, which took that property at Chappell, Illinois, and hauled it through Illinois to East St. Louis, Illinois?

10571 Mr. KELLOGG. Same objection.

A. Why, it was never understood by me, or by other railroad men that I associated with and did business with, that it was necessary to file that latter tariff to which you allude.

Q. Again, if the property was destined ultimately to St. Louis, Missouri, or westward, and was transported from East St. Louis, Illinois, over to St. Louis, Missouri, what would you say as to the tariff between East St. Louis and St. Louis?

Mr. KELLOGG. Same objection.

A. That would be the bridge company's tariff ordinarily, and that tariff would have to be filed with the Commission. Otherwise I doubt whether any of the railroads would have used it.

Q. And to your knowledge, or as you understood it, those bridge tariffs were filed by the bridge companies?—A. Yes, sir; that is my understanding.

Q. Now, did you ever know, Mr. Hurlbut, of any order sent out to your railroad that you were connected with, or any other railroad, following that decision of April 12, 1899, of the Interstate Commerce Commission to which Mr. Kellogg referred you?—A. No, sir; I never heard of it. I want to say also that for a great many years and up to that time I was directly in charge of the tariff business of the railroad that I was connected with; that if I did not personally make the tariffs they were made under my directions, and they were distributed and posted and filed under my directions; and any rules that were laid down by the legal department of the company, based on any decisions or other advices, always came to me.

Q. Now, taking up another matter; Mr. Kellogg asked you 10572 about tariffs that would contain some such statement upon

them as that they were for the account of a certain company, say the Standard Oil Company, or other language that indicated or that named a particular shipper. Were tariffs of that kind customary with the railroads, and under what circumstances?—A. I have seen a great many of them, a number of them.

Q. Under what circumstances would they be issued?—A. Why, I know that it was quite the custom to issue tariffs and rate orders, which are equivalent to tariffs, between points in Illinois for manufacturing concerns, and the rate orders would show the names of those manufacturing concerns as the consignees or the shippers, as the case might be—that is, the rates were for the account of certain specified parties.

Q. That would be done under circumstances where the particular shipper, which was so named, was alone in the business at that point?—A. Properly so; yes.

Q. That is, where there was not any competing shipper at that point with that commodity or that article?—A. Yes, sir; that was usually the case—that is, for example, there might be a boot and shoe factory in a town and rates would be made on some materials for that concern, and the rate-order tariff would show for account of that concern, there being but one of them there.

Q. Does it follow that if there were another shipper there, or another shipper came there with a commodity to transport over that railroad, that the same rate would not be given to that ship-
10573 per?—A. Not at all. There is no doubt but what the same rate would be given him, because the railroads would be very glad indeed to give to two shippers what it would give to one there, showing an increase in its traffic.

Q. In other words, would that issue of a tariff or rate sheet with any such language as that upon it indicate any intent on the part of the railroad company to discriminate between different shippers?

Mr. KELLOGG. That is objected to as incompetent.

A. Not at all.

Q. Now, referring to a statement on tariff shown you by counsel for the Government upon cross-examination upon which the words "not to be posted" were contained, I show you defendants' Exhibits 119–A, 119–B, 119–C, and I also show you 119–D. You will observe on Exhibits 119–A, 119–B, and 119–C that the words "not to be posted" are printed upon the first sheet [handing papers to witness]. I also show you defendants' Exhibit 119–D, which by its terms takes effect August 28, 1906, while the other tariffs shown you—of the Pennsylvania Railroad—took effect prior to 1906. Would you say that under the circumstances there was anything unusual or suspicious, or that indicated secrecy upon those tariffs, by the use of the words "not to be posted?"

Mr. KELLOGG. That is objected to as incompetent.

A. No, sir; I should say that there is not. After looking through these tariffs hastily I should judge that they contain principally, if not entirely, local State rates.

10574 Q. Do you notice of the last exhibit, 119–D, that it is a continuation, after the passage of the Hepburn Act in 1906, of one of the others?—A. Yes, sir.

Q. What is the fact about that?—A. It states that Supplement No. 24 to Local Rate Order G–727, which is this issue, will hereafter be known as Supplement No. 1 to I. C. C. G No. 2778.

Mr. KELLOGG. What is the date of that?

WITNESS. That is dated effective February 13, 1905.

Q. But the supplement bearing the I. C. C. number is effective when?—A. Taking effect August 28, 1906.

Q. 1906. Well, then, is this the fact, that the Pennsylvania Railroad thereby took a tariff which was made prior to the passage of the Hepburn Act, and which was apparently an unfiled tariff, and containing the words "not to be posted," and reissued that after the Hepburn Act with an I. C. C. number?—A. Yes, sir.

Q. And what is the provision upon that tariff with respect to its being posted—I mean the tariff of August, 1906, defendants' Exhibit 119–D?—A. It states near the top of the page, "To be posted in each freight station as required by law."

Q. Then, it is apparent from that, that that railroad, after the passage of the Hepburn Act in 1906, adopted, or changed its practice, at any rate, with respect to that tariff as to its taking an I. C. C. number and being posted?

Mr. KELLOGG. That is objected to as incompetent.

A. Yes, sir.

10575 Q. Mr. Hurlbut, I call your attention for a moment again to defendants' Exhibit 124–A, being a joint freight tariff on petroleum products, carload, from Toledo, Ohio, to points in Central Association territory and Trunk Line territory. Do I understand that that tariff alone covers petroleum or petroleum products?

Mr. KELLOGG. That is objected to. The tariff is the best evidence of what it covers.

A. Yes, sir; it does.

Q. No other commodity is named upon it, or class of commodities, or provided for?

Mr. KELLOGG. Same objection.

A. No, sir.

Q. Then, if petroleum products could not be carried on that tariff, no other could, could it?—A. No, sir.

Q. When that tariff refers to the National Despatch-Great Eastern Line, Shippers and Agents' Guide, if the Shippers and Agents' Guide so referred to forbade the transportation of petroleum products under that tariff, while the tariff later to the guide provided that petroleum products should be carried under the tariff, then the tariff would have defeated itself by the very reference there to the National Despatch-Great Eastern Line Guide?

Mr. KELLOGG. How about the other towns? There are other towns named.

Q. Read that reference to the National Despatch-Great Eastern Line upon the tariff.—A. It mentions, first, the Grand Trunk Railway system, mentions a number of railroads in connection
10576 with which the tariff applies, and adds: "And connections as specified in the following Agents' Guides and Billing Lists," among which is included National Despatch-Great Eastern Line.

Mr. KELLOGG. That is, the connection is named in the National Despatch-Great Eastern Line, isn't it?

WITNESS. And connections. That is, it means the Grand Trunk Railway system, certain specified railroads that are mentioned here, and connections of those roads as specified in the following Agents' Guides and Billing Lists.

Q. Then, what are the stations on the back?—A. Among the stations on the back are some in New York State, New Jersey, Boston, Massachusetts, and one point in Pennsylvania. That is in what they call the Trunk Line territory, those being the points east of Buffalo and Pittsburg. And then it states, after naming those specific points, which are known as the eastern basing points, "For list of stations to which above rates apply, see various fast freight line billing instructions." Those billing instructions give additional points in the eastern Trunk Line territory which take one or the other of the basing point rates which are specified in the tariff itself.

Q. The reference there is to the very book that is known as National Despatch-Great Eastern Line Shippers and Agents' Guide, No. 9. Take that in connection with the reference on the first page for the list of stations.

Mr. KELLOGG. He has been all over that once, Mr. Miller.

A. Let me see the guide and I can tell you better. No; so far as this tariff goes it does not refer to this particular issue——

Q. But whatever issue was then in force?—A. Whatever
10577 issue was in effect at the time the shipment moved, provided this tariff was in effect at the same time.

Q. I understand. Assume that Shippers and Agents' Guide No. 9 was in effect, giving effect to the reference upon the tariff to the Agents' Guide and Billing List of the National Despatch-Great Eastern Line and to the fast freight line billing instructions for a list of stations, could those words on the tariff be given any effect at all if petroleum and its products could not be carried to the points named in the shippers' guide?—A. No; they could not, so far as the National Despatch-Great Eastern Line is concerned.

Q. Those words would be meaningless, then, would they?—A. Entirely so, with respect to that fast freight line.

Q. Now, what would you say as to whether that tariff, that Grand Trunk tariff, was one of those referred to in the paragraph on page 1 of the Shippers' Guide No. 9 by the words, "but such shipments will be subject to special tariffs," referring to shipments of petroleum products? Is that such a tariff?

Mr. KELLOGG. Same objection.

A. I should say it is. It is a special tariff. That is to say, it applies only on one article of freight, at least what might be termed one commodity—petroleum and its products.

Q. With reference to the tariff of the Illinois Central Railroad, naming a 13-cent rate from Whiting to Grand Junction, I think you said you had nothing whatever to do with the making or issue of that tariff?—A. That is true with respect to the tariff that applied direct from Riverdale over the Ilinois Central, down the Illinois Central main line to Grand Junction.

10578 Q. Through Cairo to Grand Junction?—A. Through Cairo. The only connection I had with the 13-cent tariff was the one that applied from Whiting to Grand Junction via Evansville.

Q. Did you have to do with making the joint tariff by way of Evansville? Did you testify about that?

Mr. KELLOGG. He testified about that.

Q. Over the Eastern Illinois and the Illinois Central to Grand Junction.—A. Yes; that is the tariff that is referred to in that letter of mine that was brought to light.

Q. The letter was written after the tariff was in force?—A. Yes.

Q. Did you have to do with making the tariff?—A. I had nothing to do with with making the rate; no, sir.

Q. You did not make the rate?—A. No, sir.

Q. Then, you do not know anything about the circumstances by which that 13-cent rate from Riverdale, over the Illinois Central, through Cairo to Grand Junction was determined and that tariff made—the tariff by way of Evansville?

Mr. KELLOGG. He said he did.

Q. Do you know the circumstances?

Mr. KELLOGG. He explained them.

Mr. MILLER. I mean of his own knowledge.

A. I know the circumstances under which the tariff was made; that is to say, I know why the tariff was made. The tariff itself via that route, however, was not made under my directions.